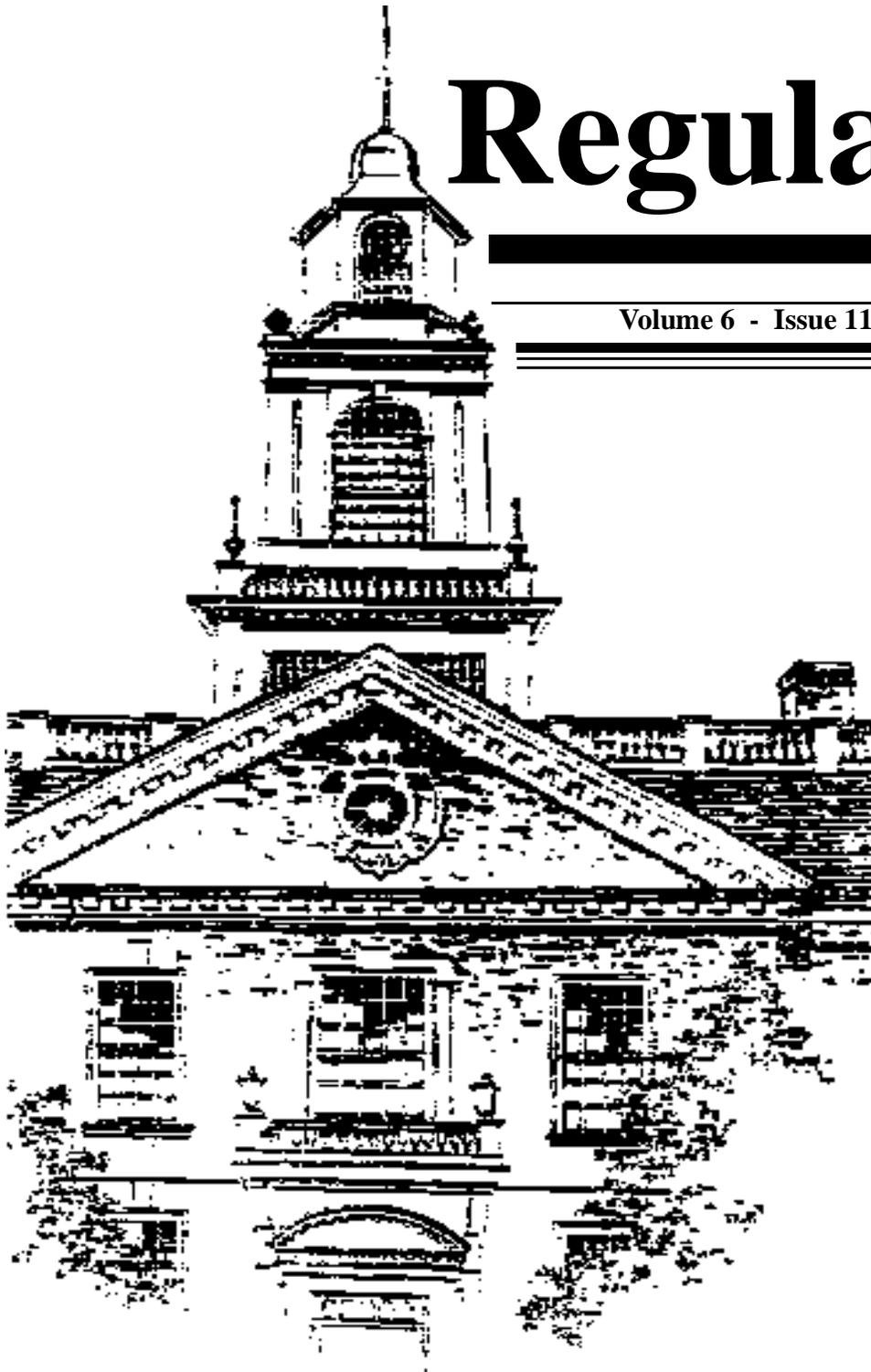


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# Delaware Register of Regulations



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Issue Date: May 1, 2003

Volume 6 - Issue 11

Pages 1389 - 1526

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Pursuant to 29 Del.C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before April 15, 2003.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

The Delaware Register of Regulations is an official State publication established by authority of 69 Del. Laws, c. 107 and is published on the first of each month throughout the year.

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

The Register will also publish some or all of the following information:

- Governor's Executive Orders
- Governor's Appointments
- Attorney General's Opinions in full text
- Agency Hearing and Meeting Notices
- Other documents considered to be in the public interest.

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## CITATION TO THE DELAWARE REGISTER

The Delaware Register of Regulations is cited by volume, issue, page number and date. An example would be:

**6 DE Reg. 279 - 280 (09/01/02)**

Refers to Volume 6, pages 279 - 280 of the Delaware Register issued on September 1, 2002.

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## SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the Delaware Register of Regulations is \$135.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of Research at 302-744-4114 or 1-800-282-8545 in Delaware.

## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

Delaware citizens and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the Register of Regulations. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation. The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt, within the time allowed, of all written materials, upon all the testimonial and written

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the Register of Regulations, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

Any person aggrieved by and claiming the unlawfulness of any regulation may bring an action in the Court for declaratory relief.

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken.

When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

Except as provided in the preceding section, no judicial review of a regulation is available

unless a complaint therefor is filed in the Court within 30 days of the day the agency order with respect to the regulation was published in the Register of Regulations.

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## CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

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ISSUE DATE	CLOSING DATE	CLOSING TIME
JUNE 1	MAY 15	4:30 P.M.
JULY 1	JUNE 15	4:30 P.M.
AUGUST 1	JULY 15	4:30 P.M.
SEPTEMBER 1	AUGUST 15	4:30 P.M.
OCTOBER 1	SEPTEMBER 15	4:30 P.M.

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**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL  
DIVISION OF AIR AND WASTE MANAGEMENT  
AIR QUALITY SECTION**

Statutory Authority: 7 Delaware Code, Chapter 60  
(7 Del.C. Ch. 60)

**NOTICE**

**1. Title Of The Regulations:**

AMENDMENTS TO DELAWARE 2005 RATE-OF-PROGRESS PLAN, And AMENDMENTS TO DELAWARE PHASE II ATTAINMENT DEMONSTRATION, Toward Attainment Of The 1-hour National Ambient Air Quality Standard (Naaqs) For The Ground-level Ozone In Kent And New Castle Counties.

**OF THE SUBJECT,  
IS:**

Amendments of 1990 (CAAA) submitted to the U.S. Environmental State Implementation Plan (SIP) revisions after 1996 to demonstrate how Delaware will achieve adequate rate-of-progress in reducing emissions of volatile organic compounds (VOC) and oxides of nitrogen (NO<sub>x</sub>), which are major precursors that form ground-level ozone. Delaware's 2005 Rate-of-Progress Plan, which covers the three-year period from 2003 to 2005, was submitted to EPA in December 2000. Under the CAAA, Delaware is also required to develop a SIP revision to demonstrate its capability of attaining the 1-hour ozone standard in 2005. This SIP revision, termed as the Phase II Attainment Demonstration, was amended and submitted to EPA in January 2000. The purpose of this action is (1) to amend the 2005 RPP, and (2) to amend the Phase II Attainment Demonstration, to reflect mobile emission budgets using the Mobile 6 emission model. No other changes to the plans are proposed.

**3. POSSIBLE TERMS OF THE AGENCY ACTION:**

None.

**4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:**

7 Del.C., Chapter 60, Environmental Control Clean Air Act Amendments of 1990

**5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:**

None

**6. NOTICE OF PUBLIC COMMENT:**

A public hearing will be held on April 30, 2003 beginning at 6:00 PM in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, Delaware.

**7. PREPARED BY:**

Frank F. Gao, Project Leader (302) 323-4542, March 11, 2003

(proposal)

**AMENDMENTS TO**

**Delaware 2005 Rate-of-Progress Plan  
FOR KENT AND NEW CASTLE COUNTIES  
For Demonstrating Progress toward Attainment of the  
National Ambient Air Quality Standard for Ground-  
Level Ozone  
Submitted To**

**U.S. Environmental Protection Agency**

**By**

**Delaware Department of Natural Resources and  
Environmental Control  
Dover, Delaware**

**April 2003**

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**List of References**

1. *Federal Clean Air Act*, 42 U.S.C.A. '7401 et seq., as amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.

2. *The Delaware 2005 Rate-of-Progress Plan for Kent and New Castle Counties*, Department of Natural Resources and Environmental Control, Dover, Delaware, December 2000.

3. *Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity*, Memorandum from John S. Seitz, Director, Office of Air

Quality Planning and Standards, US EPA, Washington, D.C., January 18, 2002.

4. *Measures to Meet the EPA-Identified Shortfalls in Delaware Phase II Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area (the Shortfall SIP Revision)*, Department of Natural Resources and Environmental Control, Dover, Delaware, July 2001.

5. *Delaware Regulations Governing the Control of Air Pollution, Regulation 24 Section 26*, Division of Air and Waste Management, Delaware Department of Natural Resources and Environmental Control, Dover, Delaware, Updated to March 8, 1995.

6. *Memorandum: Correction Errata to the 15 Percent Rate of Progress Guidance Document*, from J. T. Helms, Group Leader, Ozone Policy and Standard Group, Office of Air Quality Planning and Standards, US EPA, Research Triangle Park, North Carolina, March 17, 1999.

7. *64 FR 70444, December 16, 1999*; Approval and Promulgation of Air Quality Implementation Plans; Delaware; One-hour Ozone Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area; proposed rule.

8. *66 FR 54598, October 29, 2001*; Approval and Promulgation of Air Quality Implementation Plans; Delaware; Post-1996 Rate-of-Progress Plans and One-hour Ozone Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area; final rule.

9. *Amendments to Delaware Phase II Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Non-Attainment Area*, Department of Natural Resources and Environmental Control, Dover, Delaware, as proposed in April 2003.

## 1. Introduction

Under the Clean Air Act Amendments of 1990 (CAAA, Reference 1), Kent and New Castle Counties in Delaware are classified as severe nonattainment areas with respect to the 1-hour National Ambient Air Quality Standard (NAAQS) for ground-level ozone. The CAAA requires Delaware to submit to the US Environmental Protection Agency (EPA) a State Implementation Plan (SIP) for the period between 1990 and 1996, and a revision of such SIP every three years after 1996 to demonstrate how to achieve adequate rate-of-progress in reducing emissions of volatile organic compounds (VOC) and oxides of nitrogen (NO<sub>x</sub>), which are the major precursors that form ground-level ozone. Thus, these SIP revisions are termed as Rate-of-Progress Plans (RPPs). Delaware's 2005 Rate-of-Progress Plan, which covers the three-year period from 2003 to 2005, was submitted to EPA in December 2000 (Reference 2). The plan will be referred to hereafter as the 2005 Rate-of-Progress Plan or simply the 2005 RPP.

This document amends Delaware's 2005 RPP according

to EPA's requirements on use of the agency's newly released MOBILE6 model to reevaluate VOC and NO<sub>x</sub> emissions from on-road mobile sources (Reference 3). The amendments include using MOBILE6 for:

- (1) Reevaluating VOC and NO<sub>x</sub> emissions for the 2005 attainment year, and.
- (2) Reevaluating VOC and NO<sub>x</sub> emissions for the 1990 base year, the 1996, 1999 and 2002 milestone years, to revise the emission targets for all milestone years.

In addition, the amendments include a section that revises VOC emission estimates for the Stage I Vapor Recovery Program in Kent and New Castle Counties. The document concludes that, with (1) the replacement of MOBILE5b estimates with MOBILE6 estimates for the on-road mobile source sector, (2) the revised VOC emission estimates for the Stage I Program, (3) additional control measures identified in Delaware Shortfall SIP Revision (Reference 4), and (4) a 0.65 TPD NO<sub>x</sub> emission reduction from the 2005 RPP's Contingency Plan, Delaware meets the VOC and/or NO<sub>x</sub> emission reduction requirements set forth for 2005 by the CAAA.

The use of 0.65 TPD NO<sub>x</sub> reductions from the 2005 RPP's Contingency Plan creates a NO<sub>x</sub> reduction shortfall for the Contingency Plan itself. DNREC and DelDOT are now working cooperatively on identifying and implementing transportation control measures, and will address this small shortfall prior to the completion of the 2002 milestone demonstration (i.e., the first time the contingency could be needed).

The agency with direct responsibility for preparing and submitting this document is the Delaware Department of Natural Resources and Environmental Control (DNREC), Division of Air and Waste Management, Air Quality Management Section (AQM), under the direction of Ali Mirzakhilili, Program Administrator. The working responsibility for this document falls within the Planning and Community Protection (PCP) Branch of AQM, under the management of Raymond H. Malenfant, Program Manager II, and Ron Amirikian, Program Manager I. The following staff members of PCP are responsible for the preparation of this document:

Frank Gao, Ph.D., P.E., Environmental Engineer  
Principal Author and Project Leader  
Phil Wheeler, MRP, Environmental Planner  
Lead person for MOBILE6 modeling

Comments and/or questions regarding this document should be addressed to F. Gao at (302)323-4542, e-mail [Frank.Gao@state.de.us](mailto:Frank.Gao@state.de.us), Air Quality Management Section, DAWM-DNREC, 715 Grantham Lane, New Castle,

Delaware 19720.

**2. Revising 1990 Baseline Emission Inventory**

Delaware’s 1990 baseline VOC and NOx emissions was revised in the original 2005 Rate-of-Progress Plan to accommodate differences in on-road mobile source emissions estimated by MOBILE5a and MOBILE5b (Section 1.3, Reference 2). The baseline emissions thereof need to be revised again to reflect new emission estimates from MOBILE6. The following formula is used for this revision:

$$EMIS_{90BL-M6} = EMIS_{90BL-M5b} - M5b \text{ Emission} + M6 \text{ Emission} \quad (1)$$

where,

- $EMIS_{90BL-M6}$  = 1990 baseline all-source emission revised-using MOBILE6 for this document, in TPD;
- $EMIS_{90BL-M5b}$  = 1990 baseline all source emission revised using MOBILE5b in the original 2005 RPP (Table 1-7, Reference 2);
- $M5b$  Emission = mobile source emission estimated by MOBILE5b;
- $M6$  Emission = mobile source emission estimated by MOBILE6.

Emission data for MOBILE5b are obtained from the original 2005 RPP (Appendix F, Reference 2). Emission data for MOBILE6 are listed in Appendix A of this document. The revised 1990 baseline VOC and NOx emissions are summarized in Table 1 below.

**Table 1. Delaware 1990 Baseline VOC and NOx Emissions as Revised for MOBILE6.**

Source Sector	Kent		New Castle		Total NAA*	
	VOC	NOx	VOC	NOx	VOC	NOx
Point Sources	3.24	6.13	26.94	85.77	30.18	91.90
Stationary Area Sources	12.78	1.20	34.37	5.40	47.15	6.60
Off-Road Mobile Sources	3.49	7.89	16.67	18.78	20.17	26.67
On-Road Mobile Sources	11.84	9.24	42.16	31.03	54.00	40.27
<b>TOTAL EMISSIONS</b>	<b>31.36</b>	<b>24.46</b>	<b>120.14</b>	<b>140.97</b>	<b>151.49</b>	<b>165.43</b>

\*NAA: Non-attainment area.

To reassess emission targets in each milestone year, the above baseline emissions must be adjusted to remove VOC

and NOx emission reductions from two pre-1990 control programs, i.e., the Federal Motor Vehicle Control Program (FMVCP) and the Reid Vapor Pressure Program (RVP). Details of how to conduct this adjustment are given in the original 2005 RPP (Sect. 1.3, Reference 2). On-road mobile source emission data required for this adjustment, as estimated using MOBILE6 model, are provided in Appendix A of this document. Emission reductions from FMVCP and RVP as estimated by MOBILE6 model are summarized in Table 2. The 1990 baseline emissions adjusted to individual milestone years are summarized in Table 3. The adjusted baseline emissions will be used in a later section (Section 5) to reevaluate emission targets in individual milestone years.

**Table 2. Emission Reductions from FMVCP and RVP in On-Road Mobile Sources.**

Description	VOC	NOx	
<b>1990 Baseline On-Road Mobile Source Emissions</b>	54.00	40.27	(a)
<b>1990 Adjusted Base Year On-Road Mobile Source Emissions</b>			
Adjusted for 1996	39.42	31.85	(b) <sub>1996</sub>
Adjusted for 1999	33.71	29.38	(b) <sub>1999</sub>
Adjusted for 2002	33.09	28.62	(b) <sub>2002</sub>
Adjusted for 2005	30.97	27.66	(b) <sub>2005</sub>
<b>FMVCP/RVP Emission Reductions</b>			
For 1990-1996	14.58	8.42	(a)-(b) <sub>1996</sub>
For 1990-1999	20.29	10.89	(a)-(b) <sub>1999</sub>
For 1990-2002	20.91	11.65	(a)-(b) <sub>2002</sub>
For 1990-2005	23.03	12.60	(a)-(b) <sub>2005</sub>

**Table 3. The 1990 Baseline Emissions Adjusted to Individual Milestone Years**

Description	VOC	NOx	
<b>1990 Baseline Inventory (All Sources)</b>	151.49	165.43	(a)
<b>FMVCP/RVP Emission Reductions</b>			
For 1990-1996	14.58	8.42	(b) <sub>1996</sub>
For 1990-1999	20.29	10.89	(b) <sub>1999</sub>
For 1990-2002	20.91	11.65	(b) <sub>2002</sub>
For 1990-2005	23.03	12.60	(b) <sub>2005</sub>
<b>1990 Adjusted Baseline Emissions</b>			
Relative to 1996	136.91	157.01	(a)-(b) <sub>1996</sub>

Relative to 1999	131.21	154.54	(a)-(b) <sub>1999</sub>
Relative to 2002	130.58	153.78	(a)-(b) <sub>2002</sub>
Relative to 2005	128.46	152.83	(a)-(b) <sub>2005</sub>

### 3. Revising VOC Emission Estimates for Stage I Vapor Recovery Program

Stage I Vapor Recovery is a control measure for gasoline vapor emissions at gasoline dispensing facilities that result from unloading gasoline from a delivery vessel (tank truck) into a stationary storage vessel (storage tank). The vapors displaced in the storage tank by the liquid gasoline are retrieved into the tank truck and transported back to the refinery. Delaware Stage I Vapor Recovery Regulation was revised in January 1993 (Sec. 26 of Delaware Air Regulation 24, Reference 5). The regulation requires gasoline storage tanks at gasoline dispensing facilities to be loaded by submerged filling with vapor balance system. In the original 2005 RPP, however, VOC emissions from facilities covered by this regulation were estimated with an emission factor for the splash filling.

In March 1999, EPA revised one major projection equation for area sources, including gasoline-dispensing facilities (Reference 6). This revised equation, as shown below, allows Delaware to use an emission factor for balanced and submerged filling to better estimate VOC emissions from the controlled facilities.

$$EMIS_{PY} = ORATE_{BY} \times GF \times EF_{PY} \left[ 2 - \left( \frac{CE_{PY}}{100} \right) \left( \frac{RE_{PY}}{100} \right) \left( \frac{RP_{PY}}{100} \right) \right]$$

- where  $EMIS_{PY}$  = Projection year (2005) emission, in TPD;
- $ORATE_{BY}$  = Base year activity level  
 = 190 thousand gallons per day for Kent County  
 = 608 thousand gallons per day for New Castle County;
- $GF$  = growth factor  
 = 0.91 for both counties.
- $EF_{PY}$  = emission factor for balanced submerged filling  
 = 0.3 lb. per thousand gallons;
- $CE_{PY}$  = control efficiency in projection year  
 = 100 along with the submerged
- $EF_{PY}$  for both counties;
- $RE_{PY}$  = rule effectiveness in projection year  
 = 80% for both counties;
- $RP_{PY}$  = rule penetration  
 = 100 for both counties.

Using Eq. (2) and the above parameters, VOC emissions from Stage I facilities can be re-estimated as:

$$Kent : EMIS_{PY} = 190 \times 0.91 \times 0.3 \left[ 2 - \left( \frac{100}{100} \right) \left( \frac{80}{100} \right) \left( \frac{100}{100} \right) \right] \times \frac{1}{2000}$$

= 0.03 TPD

$$New Castle : EMIS_{PY} = 608 \times 0.91 \times 0.3 \left[ 2 - \left( \frac{100}{100} \right) \left( \frac{80}{100} \right) \left( \frac{100}{100} \right) \right] \times \frac{1}{2000}$$

= 0.10 TPD

In the original 2005 RPP, VOC emissions from Stage I facilities are 0.20 TPD and 0.64 TPD for Kent County and New Castle County, respectively (Sect. 3.5.2, Reference 2).

### 4. Revising Control Strategy Projections for Individual Milestone Years

To re-evaluate 2005 VOC and NOx emission targets with mobile source emissions generated by MOBILE6, the control strategy projections in all previous milestone years must be also re-evaluated for MOBILE6. An equation similar to Eq. (1) is used for this purpose:

$$EMIS_{PY-M6} = EMIS_{PY-M5b} - M5b-C-Emis + M6-C-Emis \tag{2}$$

- where,  $EMIS_{PY-M6}$  = projection year all-source emission revised using MOBILE6;
- $EMIS_{PY-M5b}$  = projection year all-source emission revised using MOBILE5b in the original 2005 RPP (Table 1-7, Reference 2);
- $M5b-C-Emis$  = control strategy mobile source emissions estimated by MOBILE5b (Appendixes F and L, Reference 2);
- $M6-C-Emis$  = control strategy mobile source emissions estimated by MOBILE6 (Appendix A of this document).

For 2005, in addition to the above adjustment regarding the two mobile source models (i.e., MOBILE5b and MOBILE6), the VOC emission differences for the Stage I facilities must be also adjusted in a similar manner: (1) subtracting the old Stage I VOC emissions (Sect. 3.5.2., Reference 2) from  $EMIS_{PY-M6}$  obtained from Eq. 2, and (2) adding the new Stage I estimates back to  $EMIS_{PY-M6}$ . The revised control strategy emissions for individual milestone years are summarized in Table 4.

**Table 4. Revised Control Strategy Projections for Individual Milestone Years.**

Milestone Year	Kent		New Castle		Total NAA	
	VOC	NOx	VOC	NOx	VOC	NOx
1996	25.53	26.31	94.62	147.92	120.15	174.24
1999	23.52	22.67	89.33	112.98	112.85	135.65
2002	21.23	22.09	79.44	109.72	100.67	131.81
2005	19.05	21.38	76.27	111.74	95.32	133.12

**5. Reevaluating Emission Targets for Individual Milestone Years**

Details of how to estimate emission targets for 1996, 1999, 2002 and 2005 have been described in Sections 1.3 and 1.4 of the original 2005 RPP (Reference 2). Therefore, only outlines for the necessary calculations and brief explanations are given herein.

(1) Calculating Fleet Turnover Corrections for On-Road Mobile Sources

Fleet turnover corrections are differences in FMVCP/RVP emission reductions between two adjacent milestone years, as indicated in Table 5.

**Table 5. Fleet Turnover Corrections for On-Road Mobile Sources.**

Fleet Turnover Correction	VOC	NOx	*
For 1996-1999	5.71	2.86**	(b) <sub>1996</sub> -(b) <sub>1999</sub>
For 1999-2002	0.63	0.76	(b) <sub>1999</sub> -(b) <sub>2002</sub>
For 2002-2005	2.12	0.95	(b) <sub>2002</sub> -(b) <sub>2005</sub>

\* Data obtained from Table 2.

\*\* Not needed for 1999 NOx target calculation.

(2) Calculating VOC Emission Targets without NOx Substitution

The CAAA requires that Delaware obtain 15% VOC emission reduction between 1990 and 1996, and a 9% VOC and/or NOx reduction every three years thereafter. The VOC targets levels for all milestone years are calculated first, as indicated in Table 6. It should be noted that the fleet turnover correction must be incorporated in the calculation because they are actually emission reductions from FMVCP and RVP controls that are non-creditable (Sect. 1.3., Reference 2).

**Table 6. Emission Targets of VOC for Individual Milestone Years.**

1996 Milestone Year			
1990	1996		
Baseline	Req. 15% Reduction*	FMVCP/RVP	Target Level
(a)	(b)	(c)	(d)=(a)-(b)-(c)
<b>151.49</b>	20.54	14.58	<b>116.38</b>
1999 Milestone Year			
1996	1999		
Target Level	Req. 9% Reduction*	Fleet Turnover	Target Level
(a)	(b)	(c)	(d)=(a)-(b)-(c)
<b>116.38</b>	11.81	5.71	<b>98.86</b>
2002 Milestone Year			
1999	2002		
Target Level	Req. 9% Reduction*	Fleet Turnover	Target Level
(a)	(b)	(c)	(d)=(a)-(b)-(c)
<b>98.86</b>	11.75	0.63	<b>86.48</b>
2005 Milestone Year			
2002	2005		
Target Level	Req. 9% Reduction*	Fleet Turnover	Target Level
(a)	(b)	(c)	(d)=(a)-(b)-(c)
<b>86.48</b>	11.56	2.12	<b>72.80</b>

\* The required % reductions are based on the corresponding adjusted 1990 baseline emissions in Table 3.

(3) Calculating Creditable VOC Emission Reductions  
Comparing Table 4 and Table 6 indicates that the VOC control strategy projections for all milestone years are higher than the target levels. Thus, NOx emission reductions must be considered to meet the required rate-of-progress emission reductions. First, the creditable VOC emissions and their percentages must be determined, as shown in Table 7.

**Table 7. Calculations for Creditable VOC Emission Reductions and Percentages.**

Description	VOC Emissions (TPD)	
1999 Milestone Year		
1990 Baseline VOC Emission Adjusted for 1999	131.21	(a)
1996 VOC Target Level	116.38	(b)
VOC Fleet Turnover Correction for 1996-1999	5.71	(c)
1999 VOC Control Strategy Projection*	112.85	(d)

Creditable VOC Emission Reductions for 1999	-2.18	(e)=(b)-(c)-(d)
% of VOC Reductions for 1999 Rate-of-Progress	-1.66%	(f)=(e)/(a)X100
<b>2002 Milestone Year</b>		
1990 Baseline VOC Emission Adjusted for 2002	130.58	(a)
1999 VOC Target Level	112.85	(b)
VOC Fleet Turnover Correction for 1999-2002	0.63	(c)
2002 VOC Control Strategy Projection*	100.67	(d)
Creditable VOC Emission Reductions for 2002	11.55	(e)=(b)-(c)-(d)
% of VOC Reductions for 2002 Rate-of-Progress	8.85%	(f)=(e)/(a)X100
<b>2005 Milestone Year</b>		
1990 Baseline VOC Emission Adjusted for 2005	128.46	(a)
2002 VOC Target Level	100.67	(b)
VOC Fleet Turnover Correction for 2002-2005	2.12	(c)
2005 VOC Control Strategy Projections*	95.32	(d)
Creditable VOC Emission Reductions for 2005	3.23	(e)=(b)-(c)-(d)
% of VOC Reductions for 2005 Rate-of-Progress	2.52%	(f)=(e)/(a)X100

\* These controlled projections contain FMVCP/RVP reductions that are not creditable.

**(4) Calculating Required NOx Emission Reductions.**

The guidance of this calculation is that the percentages of NOx emission reductions plus the creditable VOC reduction percentages in Table 7 must be equal to 15% for 1996 and to 9% for each milestone year thereafter. The calculations and results are summarized in Table 8.

**Table 8. Required NOx Emission Reductions for Individual Milestone Years.**

Description	NOx Emissions (TPD)	
<b>1999 Milestone Year</b>		
1990 Baseline NOx Emission Adjusted for 1999	154.54	(a)
% VOC Reductions for 1999 Rate-of-Progress	-1.66%	(b)
% NOx Reductions for 1999 Rate-of-Progress	10.66%	(c)
Total % of VOC/NOx Reduction	9.00%	(d)=(b)+(c)
NOx Emission Reductions Required for 1996-1999	16.48	(e)=(a)X(c)
<b>2002 Milestone Year</b>		
1990 Baseline NOx Emission Adjusted for 2002	153.78	(a)
% VOC Reductions for 2002 Rate-of-Progress	8.85%	(b)
% NOx Reductions for 2002 Rate-of-Progress	0.15%	(c)

Total % of VOC/NOx Reduction	9.00%	(d)=(b)+(c)
NOx Emission Reductions Required for 1999-2002	0.24	(e)=(a)X(c)
<b>2005 Milestone Year</b>		
1990 Baseline NOx Emission Adjusted for 2005	152.83	(a)
% VOC Reductions for 2005 Rate-of-Progress	2.52%	(b)
% NOx Reductions for 2005 Rate-of-Progress	6.48%	(c)
Total % VOC/NOx Reduction	9.00%	(d)=(b)+(c)
NOx Emission Reductions Required for 2002-2005	9.91	(e)=(a)X(c)

**(5) Calculating Emission Targets for Both VOC and NOx.**

By setting the VOC control strategy projections in Table 4 as VOC target levels for 1999, 2002 and 2005, and using required NOx emission reductions as determined in Table 8, the target levels of NOx emissions in individual milestone years, including 2005, can be calculated. Both VOC and NOx emission targets are summarized in Table 9.

**Table 9. Target Levels for Both VOC and NOx Emissions.**

Description	Emissions (TPD)		
	VOC	NOx	
<b>1996 Target Level-VOC</b>	<b>116.38</b>		(a)
<b>1990 Baseline Adjusted for 1999-NOx</b>		<b>154.54</b>	
<b>1999 Milestone Year</b>			
Emission Reduction for Rate-of-Progress	-2.18	16.48	(b)
Fleet Turnover Correction for 1996-1999	5.71	0.00	(c)
<b>Target Level for 1999</b>	<b>112.85</b>	<b>138.07</b>	(d)=(a)-(b)-(c)
<b>2002 Milestone Year</b>			
Emission Reduction for Rate-of-Progress	11.55	0.24	(e)
Fleet Turnover Correction for 1999-2002	0.63	0.76	(f)
<b>Target Level for 2002</b>	<b>100.67</b>	<b>137.07</b>	(g)=(d)-(e)-(f)
<b>2005 Milestone Year</b>			
Emission Reduction for Rate-of-Progress	3.23	9.91	(h)
Fleet Turnover Correction for 2002-2005	2.12	0.95	(i)
<b>Target Level for 2005</b>	<b>95.32</b>	<b>126.21</b>	(j)=(g)-(h)-(i)

**6. Additional Controls to Meet the 2005 Rate-of-Progress Emission Targets**

**6.1. NOx Shortfall in Meeting the 2005 Emission Target**

As shown in Table 9, the target levels of VOC emission and NOx emission in 2005 are 95.32 TPD and 126.21 TPD, respectively. Comparison of these two targets

with the 2005 control strategy projections, as revised in Table 4, indicates that, with all control measures proposed in the original 2005 RPP, Delaware will still have a 6.91 TPD shortfall in NO<sub>x</sub> emission reduction (Shortfall = Target Level – Control Strategy Projection = 126.21 – 133.12 = - 6.91 TPD). Thus, additional controls on either VOC or NO<sub>x</sub> emissions are needed for 2005 to cover the 6.91 TPD NO<sub>x</sub> reduction shortfall.

#### 6.2 Additional Reductions from Delaware's Shortfall SIP

In July 2001, Delaware submitted to EPA a SIP revision entitled "*Measures to Meet the EPA-Identified Shortfalls in Delaware Phase II Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area*" (Reference 4, hereafter referred to as the Shortfall SIP). The EPA approved the 6 new/amended regulations specified in the Shortfall SIP in December 2002. In the Shortfall SIP, Delaware proposed to adopt 6 new or amended regulations with compliance dates before the ozone season of 2005. These new regulations are expected to lead to an additional 4.96 TPD VOC emission reduction and an additional 0.36 TPD NO<sub>x</sub> emission reduction in 2005 (Section 3.1 and Table 3, Reference 4).

Delaware hereby further amends the original 2005 RPP by adding the above 6 regulations to its control measure list. These 6 new/amended regulations will provide a total of 6.26 equivalent NO<sub>x</sub> reductions to the milestone year 2005. This adjustment can be demonstrated in the following steps.

- (1) The 1990 baseline VOC and NO<sub>x</sub> emissions adjusted to 2005 are 128.46 TPD and 152.83 TPD, respectively (Table 3, this document). The ratio of VOC to NO<sub>x</sub> baseline emissions is

$$\text{VOC} : \text{NO}_x = 128.46 : 152.83 = 1 : 1.19$$

- (2) According to the above ratio, the additional 4.96 TPD VOC emission reduction in the Shortfall SIP is equivalent to 5.95 TPD NO<sub>x</sub> reduction (4.96x1.19=5.90 TPD). Thus, the total additional NO<sub>x</sub> emission reduction from the 6 new/amended regulations is 6.26 TPD (5.90+0.36=6.26 TPD).

#### 6.3 Additional Reductions from Contingency Measures

In the Contingency Plan of the 2005 RPP, Delaware has demonstrated that additional NO<sub>x</sub> emission reductions can be achieved from major point sources being covered by Regulation 39 (Sect. 4.2.3., Part 4, Reference 2). Delaware decides to use 0.65 TPD NO<sub>x</sub> reductions from this part to further amend the 2005 RPP main plan. Since Regulation 39 is a state adopted rule, this additional NO<sub>x</sub> reduction can be obtained without any further rule-making activities at both state and federal levels.

The use of 0.65 TPD NO<sub>x</sub> reductions from the 2005 RPP's Contingency Plan creates a NO<sub>x</sub> reduction shortfall for the Contingency Plan itself. DNREC and DeIDOT are now working cooperatively on identifying and implementing transportation control measures, and will address this small shortfall prior to the completion of the 2002 milestone demonstration (i.e., the first time the contingency could be needed).

#### 6.4 Total Additional NO<sub>x</sub> Reduction to Meet 2005 Emission Target

The total additional NO<sub>x</sub> reduction from the above two subsections is 6.91 TPD, which will cover the identified NO<sub>x</sub> reduction shortfall. Therefore, the 2005 NO<sub>x</sub> emission target under the CAAA rate-of-progress requirements will be successfully met.

It should be pointed out that the MOBILE6-based emissions in 2005 (Appendix A of this document) are also the revised on-road mobile source emission budgets for Kent and New Castle Counties for the purposes of meeting the transportation conformity requirements set forth in Section 182 of the CAAA (Reference 9). It should be noted that the revised budgets are calculated using MOBILE6 emission factors and the latest planning assumptions (i.e., vehicle registration data, VMT, speed data, fleet mix) currently available to the responsible agencies (DNREC and DeIDOT). After EPA determines that mobile budgets established by this SIP revision are adequate, these budgets shall be used to determine the conformity of transportation plans and programs to the SIP (References 3, 7 and 8).

## Appendixes

### Appendix A: Summary of MOBILE6-Based Emission Estimates.

**Table A1. MOBILE6-Based Estimates for On-Road Mobile Sources**

Inventory Title	Kent County		New Castle County		Total NAA	
	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>
1990 Base Year	11.84	9.24	42.16	31.03	54.00	40.27
1990 Baseline Mobile Sector						
Adjusted to 1996	10.80	8.68	28.63	23.17	39.42	31.85
Adjusted to 1999	9.51	7.98	24.20	21.40	33.71	29.38
Adjusted to 2002	8.69	7.67	24.40	20.94	33.09	28.62
Adjusted to 2005	7.90	7.32	23.07	20.34	30.97	27.66
Emissions with controls						
1996	9.77	9.08	26.65	23.66	36.42	32.74
1999	8.56	8.42	24.14	22.03	32.69	30.45

2002	7.00	7.89	16.88	18.94	23.87	26.83
2005	5.14	8.42	15.08	21.28	20.22	29.70

**Note:** The emissions in the table are calculated with emission factors generated by MOBILE6, and using the 2002 vehicle registration data, daily Vehicle Miles Traveled (VMT) and speeds of vehicles on the FHWA Functional Class of Highways (as the latest planning assumptions currently available to DNREC and DelDOT).

### Appendix B: MOBILE6 Input/Output Files and Emission Calculations

Due to the large volumes of the input and output files, hard and/or electric copies will be available only upon request. Written request should be addressed to Phil Wheeler at [Philip.Wheeler@state.de.us](mailto:Philip.Wheeler@state.de.us) or AQM-DNREC, 156 S. State Street, Dover, DE 19901.

(proposal)

#### AMENDMENTS TO

#### Delaware Phase II Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Non-attainment Area Submitted To

U.S. Environmental Protection Agency

By

Delaware Department of Natural Resources and Environmental Control  
Dover, Delaware  
April 2003

#### List of Tables

**Table 1.** MOBILE6 Estimates of On-Road Motor Vehicle Emissions in 2005

**Table 2.** MOBILE5b Estimates of On-Road Motor Vehicle Emissions in 2005

**Table 3.** New MOBILE6-Based Motor Vehicle Emission Budgets for 2005

#### List of References

*Federal Clean Air Act*, 42 U.S.C.A. '7401 et seq., as amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.

*Delaware Phase II Attainment Demonstration for Philadelphia-Wilmington-Trenton Ozone Nonattainment Area*, Delaware Department of Natural Resources and Environmental Control, Dover, Delaware, May 1998, as amended in January 2000, and in December, 2000.

*Memorandum: Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity*, from John S. Seitz, Director of Office of Air Quality Planning and Standards, and Margo T. Oge, Director of Office of Transportation and Air Quality, US EPA,

Washington D.C., January 18, 2002.

*Delaware 1996 Milestone Demonstration for Kent and New Castle Counties: Demonstrating Adequate Progress toward Attainment of the 1-Hour National Ambient Air Quality Standard for Ground-Level Ozone*, Delaware Department of Natural Resources and Environmental Control, Dover, Delaware, January 2000.

*The Delaware 2005 Rate-of-Progress Plan for Kent and New Castle Counties*, Delaware Department of Natural Resources and Environmental Control, Dover, Delaware, December 2000.

*Amendments to Delaware 2005 Rate-of-Progress Plan for Kent and New Castle Counties*, Delaware Department of Natural Resources and Environmental Control, Dover, Delaware, as proposed in April 2003.

*64 FR 70444, December 16, 1999*; Approval and Promulgation of Air Quality Implementation Plans; Delaware; One-hour Ozone Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area; proposed rule.

*66 FR 54598, October 29, 2001*; Approval and Promulgation of Air Quality Implementation Plans; Delaware; Post-1996 Rate-of-Progress Plans and One-hour Ozone Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area; final rule.

*Memorandum: Clarification of Policy Guidance for MOBILE6 SIPs in Mid-Course Review Areas*, from T. Helms and L. Cook, Office of Air Quality Planning and Standards, US EPA, Research Triangle Park, North Carolina, February, 2003.

#### 1. Introduction

Under the Clean Air Act Amendments of 1990 (CAAA, Reference 1), Kent and New Castle Counties in Delaware are classified as severe nonattainment areas with respect to the 1-hour National Ambient Air Quality Standard (NAAQS) for ground-level ozone. The CAAA requires Delaware to submit to the US Environmental Protection Agency (EPA) a State Implementation Plan (SIP) revision to demonstrate that the 1-hour ozone standard can be attained in 2005 in these two counties with necessary and adequate control measures from VOC and NO<sub>x</sub> emission sources. That SIP revision, entitled "Delaware Phase II Attainment Demonstration for Philadelphia-Wilmington-Trenton Ozone Nonattainment Area," was originally submitted to EPA in May 1998, and amended two times thereafter (Reference 2).

One requirement of EPA for a state's attainment demonstration SIP revision is to set up on-road motor vehicle VOC and NO<sub>x</sub> emission budgets for use in transportation conformity analysis in that state. In its amendments to the Phase II Attainment Demonstration SIP in January 2000, Delaware set up these two budgets for 2005 using EPA's MOBILE5b model and including MOBILE5-based Tier 2 benefits. In its amendments to the Phase II

Attainment Demonstration SIP in December 2000, Delaware committed that it would revise the budgets within one year after the release of the then-anticipated MOBILE6 model. In January 2002, EPA officially released the MOBILE6 model.

The document proposed herein is to use MOBILE6 model to revise the on-road motor vehicle VOC and NOx emission budgets in the Delaware Phase II Attainment Demonstration SIP, as amended in January 2000 (Reference 2). The agency with direct responsibility for preparing and submitting this document is the Delaware Department of Natural Resources and Environmental Control (DNREC), Division of Air and Waste Management, Air Quality Management Section (AQM), under the direction of Ali Mirzakhali, Program Administrator. The working responsibility for this document falls within the Planning and Community Protection (PCP) Branch of AQM, under the management of Raymond H. Malenfant, Program Manager II, and Ron Amirikian, Program Manager I. The following staff members of PCP are responsible for the preparation of this document:

Frank Gao, Ph.D., P.E., Environmental Engineer  
Principal Author and Project Leader  
Phil Wheeler, MRP, Environmental Planner  
Lead person for MOBILE6 modeling

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## 2. Requirements from EPA on Use of MOBILE6 Model

In January 2002, EPA officially released the MOBILE6 model for states to use in their ozone SIP revisions and transportation conformity analysis. In a policy guidance regarding the use of MOBILE6 model (Reference 3), EPA requires that, if a state used MOBILE5-based Tier 2 benefits when it determined its previous on-road motor vehicle emission budgets, the state must revise those budgets within one year after MOBILE6 is released, and submit the revised budgets to EPA as a SIP revision. Since Delaware used the MOBILE5-based Tier 2 benefits in its last mobile budget SIP submittal, Delaware needs to meet this requirement upon the MOBILE6 release (See also References 7 and 8).

According to the same guidance, Delaware can revise its motor vehicle emission budgets using MOBILE6 without revising the entire Phase II Attainment Demonstration SIP or completing additional modeling, if Delaware can satisfy the following two criteria: (1) the SIP continues to demonstrate attainment when the MOBILE6 is used to estimate motor vehicle emissions and to set up new emission budgets, and (2) the growth and control strategy assumptions for

stationary sources and non-road mobile sources continue to be valid to maintain the overall conclusions of the SIP.

Delaware has decided not to revise the entire Phase II Attainment Demonstration SIP and not to conduct additional modeling. The second criterion above can be satisfied by the following two documents: (1) Delaware 1996 Milestone Demonstration for Kent and New Castle Counties (Reference 4), and (2) Delaware 1999 Milestone Compliance Demonstration for Kent and New Castle Counties. In these two documents, Delaware has successfully demonstrated that the overall emissions of VOC and/or NOx in the 1996 and 1999 Periodical Emission Inventories are below the emission targets in these two milestone years, which indicates continuous adequate progress toward the attainment of the 1-hour ozone standard in 2005. In addition, Delaware is currently amending its 2005 Rate-of-Progress Plan by incorporating the MOBILE6-based mobile source emission estimates. In this current SIP amendments document, Delaware has demonstrated that, with adequate additional controls over non-mobile sources, the 2005 rate-of-progress emission targets for both VOC and NOx will be successfully met (Reference 6).-

In the following sections of this document, Delaware will show that EPA's first criterion will be satisfied by demonstrating that the MOBILE6 estimates of motor vehicle emissions are equal to or lower than the previous MOBILE5 estimates for the attainment year of 2005, and that the percentage change in on-road motor vehicle emissions using MOBILE6 is the same or higher than the percentage change calculated using MOBILE5.

## 3. MOBILE6 Estimates of On-Road Mobile Source Emissions

The MOBILE6 modeling has been conducted in-house cooperatively by staff members of DelDOT and DNREC Air Quality Management Section. The modeling includes all control measures specified in Delaware's 2005 Rate-of-Progress Plan (Reference 5). The model input files, output files, and summary of emission factors generated by MOBILE6 are provided in Appendix A of this document. Using the emission factors generated by MOBILE6 and the latest planning assumption (i.e., the 2002 vehicle registration data, VMT/speed data) currently available to the responsible agencies (DNREC and DelDOT), the MOBILE6-based motor vehicle emissions can be calculated. The calculations and results are also presented in Appendix A. The MOBILE6 estimates of on-road motor vehicle emissions in the attainment year 2005 are summarized in Table 1.

**Table 1. MOBILE6 Estimates of On-Road Motor Vehicle Emissions in 2005.**

Attainment Year	Kent County		New Castle County		Total NAA*	
	VOC	NOx	VOC	NOx	VOC	NOx
2005 Emissions (TPD)	5.14	8.42	15.08	21.28	20.22	29.70

\*NAA: Non-Attainment Area.

**4. Comparison of MOBILE6-Based Estimates and MOBILE5b-Based Estimates**

The MOBILE5-based estimates of on-road motor vehicle emissions in 2005 are presented in Table 2. These estimates are also the on-road motor vehicle emission budgets as specified in Delaware’s Phase II Attainment Demonstration SIP, as amended in January 2000 (Reference 2). Details of how Delaware conducted MOBILE5b modeling work and obtained these estimates are provided in Delaware’s 2005 Rate-of-Progress Plan (Reference 5).

**Table 2. MOBILE5 Estimates of On-Road Motor Vehicle Emissions in 2005.**

Attainment Year	Kent County		New County Castle		Total NAA*	
	VOC	NOx	VOC	NOx	VOC	NOx
2005 Emission (TPD)	4.84	7.91	14.76	22.92	19.60	30.83

\*NAA: Non-Attainment Area.

Comparison of MOBILE6-based estimates and MOBILE5-based estimates can be made through the following steps.

- (1) For the total non-attainment area (NAA), the MOBILE6-based VOC emission is 0.62 TPD higher than the MOBILE5-based VOC emission ( $20.22 - 19.60 = +0.62$  TPD), while the MOBILE6-based NOx emission is 1.11 TPD lower than the MOBILE5-based NOx emission ( $29.70 - 30.83 = -1.13$  TPD).
- (2) Delaware’s 1990 baseline VOC and NOx emissions, as adjusted to the attainment year of 2005 using MOBILE6 model, are 128.46 TPD and 152.83 TPD, respectively (Table 3, Reference 6). The ratio of VOC to NOx baseline emissions is

$$\text{VOC} : \text{NOx} = 128.46 : 152.83 = 1 : 1.19$$

- (3) Using the above VOC-to-NOx emission ratio, the 0.62 TPD VOC emission increase due to using MOBILE6 is equivalent to a 0.74 TPD NOx emission increase ( $0.62 \times 1.19 = 0.74$  TPD). This equivalent NOx emission increase is smaller than the 1.13 TPD NOx emission decrease as indicated in (1) above.

The above comparison indicates that in the attainment year of 2005, the new MOBILE6 estimates are lower than the MOBILE5 estimates previously presented in Delaware’s Phase II Attainment Demonstration SIP, as amended in January 2000 (Reference 2), and in Delaware’s 2005 Rate-of-Progress Plan (Reference 5).

In February 2003, EPA issued a memorandum that provides clarifying guidance on how to demonstrate attainment when using MOBILE6-based estimates to replace MOBILE5-based estimates (Reference 9). According to this latest clarifying guidance, Delaware should compare the percentage change in the on-road mobile source emissions between the 1990 base year and the attainment year of 2005. If the percentage change in the on-road emissions using MOBILE6 is the same or higher than the percentage change based on MOBILE5, a shortfall is not indicated and Delaware’s attainment demonstration SIP continues to demonstrate attainment.

The above-mentioned comparison is accomplished and summarized in Table 2a. As indicated in Table 2a, the percentage changes in the on-road mobile emissions using MOBILE6 are 62.6% and 26.2% for VOC and NOx, respectively. The percentage changes using MOBILE5 are 58.3% and 18.1% for VOC and NOx, respectively. It is clear that percentage changes in both VOC and NOx emissions in the mobile sector are higher when using MOBILE6 than using MOBILE5, which indicates that Delaware continues to demonstrate attainment. Therefore, the first criterion specified in EPA’s MOBILE6 guidance document (Reference 3) is satisfied. As mentioned in Section 2 of this document, the second criterion has been satisfied as well.

**Table 2a. Comparison of Percentage Changes in On-Road Mobile Emissions.**

	Kent County		New Castle County		Total NAA	
	VOC	NOx	VOC	NOx	VOC	NOx
<b>MOBILE6 Estimates</b>						
1990 Base Year	11.84	9.24	42.16	31.03	54.00	40.27
2005 Attainment Year	5.14	8.42	15.08	21.28	20.22	29.70
<b>% reduction</b>	56.6%	8.9%	64.2%	31.4%	62.6%	26.2%

**MOBILE5b  
Estimates**

1990 Base Year	12.89	10.62	34.07	27.04	46.96	37.66
2005 Attainment Year	4.839	7.905	14.76	22.92	19.60	30.83
<b>% reduction</b>	62.5%	25.6%	56.7%	15.2%	58.3%	18.1%

**5. New MOBILE6-Based Motor Vehicle Emission Budgets**

Since the two criteria specified in EPA's MOBILE6 guidance document (Reference 3) are satisfied, Delaware has decided to set the new MOBILE6-based estimates to be the new on-road motor vehicle emission budgets for Kent and New Castle Counties in the attainment year of 2005, as presented in Table 3. After EPA determines that mobile budgets established by this SIP revision are adequate, these budgets shall be used to determine the conformity of transportation plans and programs to the SIP (References 3, 7 and 8).

**Table 3. New MOBILE6-Based Motor Vehicle Emission Budgets for 2005.**

Attainment Year	Kent County		New Castle County		Total NAA*	
	VOC	NOx	VOC	NOx	VOC	NOx
2005 Budgets (TPD)	5.14	8.42	15.08	21.28	20.22	29.70

\* Non-attainment area.

**Appendix A. MOBILE6 Data Files and Emissions Calculations.**

Due to the large number of the data files, hard and/or electronic copies will be available only upon request. Written request should be addressed to Phil Wheeler at [Philip.Wheeler@state.de.us](mailto:Philip.Wheeler@state.de.us) or AQM-DNREC, 156 S. State Street, Dover, DE 19901.

**Symbol Key**

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text. Language which is ~~stricken~~ through indicates text being deleted.

**Proposed Regulations**

Under 29 Del.C. §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the Register of Regulations. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation; The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

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**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
BOARD OF PHARMACY**

24 DE Admin. Code 2500  
Statutory Authority: 24 Delaware Code,  
Section 2509 (24 Del. C. §2509)

[HTTP://WWW.DELREGS.STATE.DE.US](http://www.delregs.state.de.us)

**1.0 Pharmacist Licensure Requirements****1.1 Examination Requirements**

1.1.1 In order to be eligible for examination for licensure, an applicant must ~~have graduated from an approved school or college of pharmacy~~ provide proof of completion of all requirements for graduation from an approved school or college. An approved school or college of pharmacy is an institution which has established standards in its undergraduate degree program which are at least equivalent to the minimum standards for accreditation established by the American Council on Pharmaceutical Education. Provided, however, that graduates of schools or colleges of pharmacy located outside of the United States, which have not established standards in their respective undergraduate degree programs which are at least equivalent to the minimum standards for accreditation established by the American Council on Pharmaceutical Education, shall be deemed eligible for examination for licensure by providing evidence satisfactory to the Board of Pharmacy of graduation from such school or college and by successfully passing an equivalency examination recognized by the Board of Pharmacy. Certification by the National Association of Boards of Pharmacy Foundation (NABP) Foreign Pharmacy Graduate Examination Committee (FPGEC) meets the equivalency examination requirement.

1.1.2 Candidates must obtain a passing grade of ~~75~~ as determined by the National Association of Boards of Pharmacy (NABP) on the North American Pharmacist Licensure Examination (NAPLEX) and the Multistate Pharmacy Jurisprudence Examination for Delaware (MPJE) Examination to be eligible for a license to practice. A

**PLEASE TAKE NOTICE**, pursuant to 29 Del.C. §2509, the Delaware Board of Pharmacy (Board) has developed and proposes to modify Regulations 1.0 and 3.0. The changes to Regulation 1.0 relating to the national examinations make the rule consistent with the requirements of the National Association of Boards of Pharmacy (NABP). The changes to Regulation 3.0 give a pharmacy more discretion in choosing the appropriate reference material and limit the requirement for metric weights to a pharmacy using a balance.

A public hearing will be held on June 11, 2003 at 9:30 a.m. in the Jesse Cooper Building, Room 309 (third floor conference room), Federal and Water Streets, Dover, DE 19901. Written comments can be submitted at any time prior to the public hearing in care of Gradella E. Bunting at the above address. In addition to publication in the Register of Regulations and two newspapers of general circulation, copies of the proposed regulation can be obtained from Gradella E. Bunting by calling (302)739-4798.

**PLEASE NOTE: ONLY THOSE REGULATIONS BEING AMENDED, 1.0 AND 3.0, ARE BEING PUBLISHED. THE ENTIRE REGULATION IS AVAILABLE AT THE DELAWARE REGULATIONS WEBSITE,**

~~candidate must take an examination within 365 days of the determination of eligibility by the Board. The Secretary will supply the grades obtained to the candidate upon receipt of a written request from that person. In addition, candidates must take and obtain a passing grade of 75 on a Jurisprudence Examination.~~

~~1.1.3 The Board will re-confirm the eligibility of an applicant who fails the NAPLEX. Any applicant who fails the examination The applicant shall be entitled to take a re-examination at least ninety-one (91) days following the date of the failure. If an applicant has failed the examination three times, he/she shall be eligible to re-take the examination NAPLEX, provided that he/she produces evidence of working full-time as an intern for a period of six months between examinations or has attended an accredited college of pharmacy as a registered student for a minimum of one semester consisting of 12 credits during the interim. A certification of satisfactory completion of such work shall be furnished by the Dean of the College or the preceptor as the case may be. The applicant may continue to sit for the Examination at its regularly scheduled time in the next succeeding years, provided the applicant has fulfilled the requirement for internship or course of study required herein between each examination.~~

~~1.1.4 Three failures of the Jurisprudence Examination requires three months of internship or one semester college course of Jurisprudence prior to the applicant being eligible to re-take the Jurisprudence examination. The Board will re-confirm the eligibility of an applicant who fails the MJPE. The applicant shall be entitled to re-take the MJPE at least thirty-one (31) days following the date of the failure. If an applicant has failed the examination three times, he or she shall be eligible to re-take the examination, provided that he or she produces evidence of working full-time as an intern for a period of three months or has completed a one semester college course on jurisprudence.~~

## 1.2 Practical Experience Requirements

1.2.1 An applicant for registration as an intern must submit an application for registration of Internship after entering the first professional year of college of pharmacy which includes an "Affidavit of Class Standing" and "Affidavit of Preceptor." This application must be obtained from the Board of Pharmacy. If the applicant is a graduate of a foreign pharmacy school, he/she must produce evidence that he/she has passed an equivalency examination by the Board.

1.2.2 Persons who register as interns in the State of Delaware shall, in accordance with the requirements of 24 Del.C. §2515, complete not less than 1500 hours of Board approved practical experience under the supervision of a licensed pharmacist. The total 1500 hours of internship may be acquired in the community or hospital settings. A minimum of 1000 hours shall be obtained in the community

or hospital settings. The remaining 500 hours may be obtained in other recognized fields of practice, e.g.: Industrial Pharmacist, Drug Information Pharmacist, Military Pharmacist, Mail Order Pharmacist, HMO Pharmacist, Consultant Pharmacist (Nursing Home, Infusion, Medicaid DUR, Etc.), Home Health Care Pharmacist (may include Durable Medical Equipment, etc.), Nuclear Pharmacist, Compliance Pharmacist, Government Pharmacist, Clinical Pharmacist, Contracted Pharmacy Services.

1.2.3 The hours accrued during the College of Pharmacy Practical Experience Program may be applied to the 1500 hours total. These hours shall be recorded on the College Practical Experience Affidavit supplied by the Board. Additional practical experience acquired in the State of Delaware must be submitted to the Board on the Affidavit of intern Experience form provided by the Board of Pharmacy Office. Practical experience acquired in another State is acceptable if the State Board in which the applicant acquired the hours submits a letter of certification, or if the applicant's preceptor completes the Delaware State Board of Pharmacy's Affidavit of intern Experience form. Applicants who have not completed all the practical experience requirements, but who have graduated from an accredited college or have been certified by the NABP Foreign Pharmacy Graduate Examination Committee are eligible to take the examination. However, applicants will not be fully licensed until all the requirements of the Statutes and Regulations are completed.

1.2.4 Practical experience must be acquired under the supervision of a licensed pharmacist known as a Preceptor. The Preceptor must be a pharmacist licensed in this State or any other State and must have a minimum of two years of pharmacy practice. The Preceptor must certify that the intern has successfully completed all the requirements outlined in the Responsibilities of the Intern professional assessment form.

1.2.5 An intern must notify the Board of Pharmacy in writing within ten (10) days of a change of preceptor. A change of preceptor affidavit must be completed and filed with the Board.

## 1.3 Continuing Education Requirements

1.3.1 A pharmacist must acquire 3.0 C.E.U.'s (30 hours) per biennial licensure period. No carry over of credit from one registration period to another period is permitted.

1.3.2 Hardship - Hardship exemptions may be granted by the Board of Pharmacy upon receipt of evidence that the individual was unable to complete the requirements due to circumstances beyond his control.

1.3.3 Criteria for Hardship Exemption as Recommended by the Board of Pharmacy:

1.3.3.1 Applicant must notify the Board in writing concerning the nature of the hardship and the time

needed for an extension. In case of medical disability, a letter from the physician with supporting documentation to corroborate the condition and the length of time of extension needed.

1.3.3.2 The Board of Pharmacy will review requests.

1.3.3.3 The Board will notify the registrant of its decision.

1.3.4 Persons who are newly licensed after the registration period begins, must complete continuing education units proportional to the total number of continuing education units required for the biennial licensure renewal. (1.25 hours/per month).

#### 1.4 Continuing Professional Educational Programs

##### 1.4.1 Topics of Study

Topics of study shall be subject matter designed to maintain and enhance the contemporary practice of pharmacy.

##### 1.4.2 Approved Provider

1.4.2.1 Any provider approved by ACPE.

1.4.2.2 In-state organization which meets criteria approved by the Board.

##### 1.4.3 Application for Delaware State Provider

1.4.3.1 Any in-state organization may apply to the Board on forms provided by the Board for initial qualification as an approved provider. The Board shall accept or reject any such application by written notice to such organization within 60 days after receipt of its application. If an organization is approved, the Board will issue a certificate or other notification of qualification to it, which approval shall be effective for a period of two years and shall be renewable upon the fulfillment of all requirements for renewal as set forth by the Board.

1.4.3.2 The Board may revoke or suspend an approval of a provider or refuse to renew such approval if the provider fails to maintain the standards and specifications required. The Board shall serve written notice on the provider by mail or personal delivery at its address as shown on its most current application specifying the reason for suspension, revocation, or failure to renew. The provider so affected shall, upon written request to the Board within ten days after service of the notice, be granted a prompt hearing before the Board at which time it will be permitted to introduce matters in person, or by its counsel, to defend itself against such revocation, suspension, or failure to renew, in accordance with the provisions set forth in the State's Administrative Procedures Act.

1.4.4 Criteria for Approval of Delaware State Providers. Only applicants who are located within the State of Delaware are eligible. Such Continuing Education providers shall provide evidence of ability to meet the following criteria or approval as a Continuing Pharmaceutical Education Provider. Other persons must apply through ACPE for approval or be acceptable to other

Boards of Pharmacy that certify continuing education for relicensure.

##### 1.4.4.1 Administration and Organization

1.4.4.1.1 The person who is in charge of making sure that the program meets the quality standards must have a background in the administration of education programs.

1.4.4.1.2 There shall be an identifiable person or persons charged with the responsibility of administering the continuing pharmaceutical education program.

1.4.4.1.3 Such personnel shall be qualified for such responsibilities by virtue of experience and background.

1.4.4.1.4 If an approved provider presents programs in co-sponsorship with other non-approved provider(s), the approved provider has the total responsibility for assurance of quality of that program. If more than one approved provider co-sponsors a program, they have the joint responsibility for assuring quality.

1.4.4.1.5 Administrative Requirements include:

1.4.4.1.5.1 The development of promotional materials which state:

1.4.4.1.5.1.1 Educational objectives.

1.4.4.1.5.1.2 The target audience.  
1.4.4.1.5.1.3 The time schedule of the activities.

1.4.4.1.5.1.4 Cost to the participant/covered items.

1.4.4.1.5.1.5 Amount of C.E. credit which will be awarded.

1.4.4.1.5.1.6 Credentials of the faculty, presenters, and speakers.

1.4.4.1.5.1.7 Self-evaluation instruments.

1.4.4.1.5.2 Compliance with a quantitative measure for C.E. credit.

1.4.4.1.5.2.1 The number of C.E.U.'s to be awarded for successful completion shall be determined by the provider and reported in the promotional materials.

1.4.4.1.5.2.2 In cases where the participants' physical presence is required, C.E. credit will only be awarded for that portion of the program which concerns itself with the lecture(s), evaluation and question and answer segments.

1.4.4.1.5.2.3 The measure of credit shall be a fifty-minute contact hour. In the case of other programs such as home study courses, the amount of credit awarded shall be determined by assessing the amount of time the activity would require for completion by the participant if delivered in a more formal and structured

format.

1.4.4.1.5.2.4 The provider must provide the Board upon request with appropriate records of successful participation in previous continuing education activities.

1.4.4.1.5.2.5 The provider must present to the participant a form or certificate as documentation of the completion of the program. The form must be at least 4" x 6" and no larger than 8 1/2" x 11". That certificate must show the name, address, and license number of the participant, the name of the provider, the title and date of the program, the number of credits earned, and an authorized signature from the provider.

1.4.4.2 Program Faculty. The selection of program faculty must be based upon proved competency in the subject matter and an ability to communicate in order to achieve a learning experience.

#### 1.4.4.3 Program Content Development

1.4.4.3.1 Such programs shall involve effective advance planning. A statement of educational goals and/or behaviors must be included in promotional materials. Such objectives and goals must be measurable and accessible to evaluation. In determining program content, providers shall involve appropriate members of the intended audience in order to satisfy the educational needs of the participants. All programs of approved providers should pertain to the general areas of professional pharmacy practices which should include, but not be limited to:

1.4.4.3.1.1 The social, economic, behavioral, and legal aspects of health care,

1.4.4.3.1.2 the properties and actions of drugs and drug dosage forms,

1.4.4.3.1.3 the etiology, characteristics, therapeutics and prevention of the disease state,

1.4.4.3.1.4 pharmaceutical monitoring and management of patients.

1.4.4.3.2 All ancillary teaching tools shall be suitable and appropriate to the topic.

1.4.4.3.3 All materials shall be updated periodically to include up-to-date-practice setting.

1.4.4.3.4 It is the responsibility of the provider to be sure that the programs are continuously upgraded to meet educational objectives of the Practice of Pharmacy. The needs of the pharmacist participant must be considered in choosing the method of delivery. Innovation in presentations is encouraged within the limits of budget resources and facilities. Whatever method of delivery is used, it must include the participation of the pharmacist as much as possible within the program, i.e. questions and answers, workshops, etc.

1.4.4.4 Facilities. The facilities shall be adequate for the size of the audience, properly equipped (all appropriate audio/-visual media materials), well lighted and

ventilated to induce a proper learning experience.

1.4.4.5 Evaluation. Effective evaluation of programs is essential and is the responsibility of both the provider and participant.

1.4.4.5.1 Participant - Some evaluation mechanisms must be developed by the provider to allow the participant to assess his/her own achievement per the program.

1.4.4.5.2 Provider evaluation - a provider shall also develop an instrument for the use of the participant in evaluating the effectiveness of the program including the level of fulfillment of stated objectives.

1.4.5 Criteria for Awarding Continuing Education Credits. Individual programs must meet the criteria for provider approval in order to be considered. In those cases where the provider is not an ACPE provider, nor a Board of Pharmacy approved provider, a registrant may complete an application provided by the Board for approval of individual programs.

1.4.5.1 In order to receive full credit for non-ACPE approved programs of one-to-two hour lengths, evidence of a post test must be presented. An automatic 25% deduction if no post test presented.

1.4.5.2 In order to receive full credit for non ACPE approved programs of three or more hours in length, evidence of a pre and post test must be presented. Automatic 25% deduction if no pre and post test presented.

1.4.5.3 Credit will be assigned only for the core content of the program which explicitly relates to the contemporary practice of Pharmacy.

1.4.5.4 A maximum of 2 credit hours will be awarded for First Aid, attendance at a Board of Pharmacy meeting and CPR/BCLS courses one time only per registration period.

1.4.5.5 Credit for Instructors of Continuing Education

1.4.5.5.1 Any pharmacist whose primary responsibility is not the education of health professionals, who leads, instructs or lectures to groups of nurses, physicians, pharmacists or others on pharmacy related topics in organized continuing education or inservice programs, shall be granted continuing education credit for such time expended during actual presentation, upon adequate documentation to the Delaware Board of Pharmacy.

1.4.5.5.2 Any pharmacist whose primary responsibility is the education of health professionals shall be granted continuing education credit only for time expended in leading, instructing, or lecturing to groups of physicians, pharmacists, nurses or others on pharmacy related topics outside his/her formal course responsibilities (that is, lectures or instructions must be prepared specifically for each program) in a learning institution.

1.4.5.5.3 Credit for presentations of in-service training programs or other lectures shall be granted only for topics meeting the criteria for continuing pharmacy education, and shall be granted only once for any given program or lecture. (Any topic completely revised would be eligible for consideration.)

1.4.5.5.4 A maximum of 6 hours (0.6 C.E.U.'s) in this category may be applied toward fulfilling the total biennial continuing education requirements.

1.4.5.6 Credit for On the Job Training:

1.4.5.6.1 The Board of Pharmacy does not as a general rule encourage the submission of "on the job training" for fulfilling the continuing education requirements. All programs meeting this definition shall be reviewed on an individual basis.

1.4.5.6.2 All programs that are submitted for credit must meet the criteria for continuing pharmacy education.

1.4.5.6.3 No credit shall be awarded for programs required by an employer for continued employment of the employee. (Examples OSHA training, Infection Control Education required by JCAHO.)

1.4.5.6.4 A maximum of 4 hours (0.4 C.E.U.'s) in this category may be applied toward fulfilling the total biennial continuing education requirements.

1.5 The Verification of Continuing Education - A pharmacist shall complete the required continuing education and submit the signed renewal form with appropriate fees to the Board of Pharmacy. A pharmacist shall retain the supporting documentation, such as certification of completion for a minimum of six years. The Board will randomly audit the documentation of at least 10% of licensed pharmacists every biennial term. Supporting documentation may be requested for up to six years. Pharmacists who were not selected for audit do not send supporting documentation to the Board. Submitting a false documentation may constitute grounds for discipline under 24 Del.C. §2518 (a) (1).

1.6 Re-Entry - A pharmacist may have his/her license reinstated by completing the following requirements:

1.6.1 Payment of any back fees;

1.6.2 Successfully obtaining a grade of 75 on an examination on the Practice of Pharmacy if the pharmacist has not practiced in three years;

1.6.3 Submission of evidence of completion of at least 20 hours of approved C.E. from the date of application for reinstatement if the pharmacist has practiced within the last three years.

1.7 Reciprocal Requirements

1.7.1 ~~The Board will accept an applicant for reciprocity provided that his practical pharmacy experience and his experience with in the practice after licensure is at least equivalent to the practical pharmacy experience required by the Delaware Board. An applicant for licensure~~

by reciprocity shall be of good moral character and shall:

1.7.1.1 submit proof that he or she was qualified for licensure in Delaware at the time of initial licensure by examination;

1.7.1.2 submit proof of licensure in good standing from each state where he or she is or has been licensed; and

1.7.1.3 obtain a passing score on the MPJE on the laws applicable in this State as provided in Regulation 1.1.

~~1.7.2 Candidates for reciprocity licensure, except those who have been licensed by examination within the last year, must have practice as a registered pharmacist for at least one year during the last three years or shall be required to pass the Board of Pharmacy's Practice of Pharmacy examination or an examination deemed equivalent by the Board and obtained a minimum grade of 75 percent.~~

~~1.7.3 1.7.2~~ Reciprocity applicants who took examinations after June 1, 1979, must have passed the ~~National Association of Boards of Pharmacy standard examination~~ NAPLEX or an examination deemed equivalent by the Board and obtained scores required for applicants for licensure by examination.

~~1.7.4 All reciprocal applicants must take a written jurisprudence examination and obtain a minimum grade of 75 percent. Jurisprudence examination will be given at such times as determined by the Board. In order to be eligible to take the jurisprudence examination, all necessary paperwork must be completed and received by the Board office at least 10 days prior to the next scheduled examination.~~

~~1.7.5 1.7.3~~ Applicants who are licensed by reciprocity must begin accruing continuing education units at a rate of 1.25 hours/month beginning with the month of licensure.

Regulation 1.2 revised 10/11/96

Regulation 1.3.2 revised 2/6/97

Regulation 1.3.2 deleted, 1.3.3.1 amended, 1.4 amended

Effective date 10/11/98

**See 1 DE Reg. 1965 (6/1/98)**

**See 2 DE Reg. 683 (10/1/98)**

**See 4 DE Reg. 163 (7/1/00)**

**See 4 DE Reg. 1501 (3/1/01)**

**See 6 DE Reg. 488 (10/1/02)**

### **3.0 Pharmacy Requirements**

#### **3.1 Pharmacist in Charge**

3.1.1 Application for permit to operate a pharmacy in the State of Delaware must be on a form approved by the Board. The form shall include the statement to be signed by the pharmacist in charge, "I understand that I am responsible for conducting and managing the prescription department in compliance with applicable State and Federal laws."

3.1.2 The Board interprets the responsibilities of the Pharmacist-in-Charge to include, but not be limited to the following:

3.1.2.1 Maintain necessary pharmaceutical equipment and reference texts in accordance with the State Board of Pharmacy requirements.

3.1.2.2 Maintain records required by the Uniform Controlled Substances Act and other relevant State and Federal regulations.

3.1.2.3 Maintain proper security of particular pharmacy operation during and after normal business hours.

3.1.2.4 Establish procedures within operation that maintain standard of practice as it relates to the dispensing of pharmaceuticals. These procedures shall include proper supervision of supportive personnel and delegation of authority to another pharmacist when not on duty.

3.1.2.5 The pharmacist on duty is directly responsible for his own actions.

3.1.2.6 Notify the Board of Pharmacy in writing within 10 days of termination as pharmacist-in-charge.

3.2 Owner's Affidavit. The owner or owners and, in the case of a corporation, an authorized official of the corporation must present an affidavit properly notarized containing the statement, "I hereby swear or affirm that the foregoing statements are correct and do hereby agree to abide by the pharmacy laws of the State of Delaware and to all rules and regulations of the Delaware State Board of Pharmacy." The Board must be notified within 10 days of change of ownership.

3.3 Equipment and Reference Materials. Each pharmacy shall have the following equipment and ~~current edition of the following texts:~~ maintain a library of the latest edition and supplements of current reference sources (either hard copy or electronically accessible) appropriate to the individual pharmacy practice and to the care of the patients served. The reference sources must:

3.3.1 References:

3.3.1.1 ~~Delaware Laws and Regulations governing Pharmacy.~~ Provide information on the therapeutic use, dosing, pharmacology, adverse effects, and interactions of drugs dispensed to patient.

3.3.1.2 ~~Federal Regulations covering the Food and Drug Act, and Controlled Substances Act (If available in another text, purchase is not necessary)~~ Provide information helpful in the counseling of patients on the use of drugs dispensed.

3.3.1.3 ~~USP-DI (All volumes and supplements).~~ Enable the pharmacist to properly compound medicines within accepted standards of pharmacy practice.

3.3.1.4 Include a listing of therapeutic equivalents for drugs dispensed.

~~One (minimum) of the following texts~~

~~from each category:~~

~~3.3.1.4.1 Drug Interactions~~

~~3.3.1.4.1.1 Facts and Comparisons~~

~~Drug Interactions (Metaphor)~~

~~3.3.1.4.1.2 Hansten's Drug~~

~~Interactions~~

~~3.3.1.4.1.4 APhI Evaluation of Drug~~

~~Interactions~~

~~3.3.1.4.2 Drug Information:~~

~~3.3.1.4.2.1 Facts and Comparisons~~

~~3.3.1.4.2.2 American Hospital~~

~~Formulary Service~~

~~3.3.1.4.2.3 Pharmindex~~

3.3.1.5 Include current Delaware and federal laws and regulations governing pharmacy and controlled substances.

3.3.1.6 Provide any other information necessary to the safe and effective practice of pharmacy for the specific practice setting.

3.3.2 Equipment:

3.3.2.1 Prescription Scale, Class A

Set of metric weights if a balance is used

3.3.2.2 Graduates, (must be glass) Metric

One of Each:

30 ml

60 ml

125 ml

500 ml

(or Set with both metric and Apothecary

Graduations may be used)

3.3.2.3 Mortars and Pestles

1 8 ounce glass

1 8 ounce wedgewood

3.3.2.4 Filter Paper

3.3.2.4 Prescription/physician Order Files

3.3.2.5 Two Spatulas

3.3.2.6 One Glass Funnel

3.3.2.7 One Glass Stirring Rod

3.3.2.8 Ointment Slab or Papers

3.3.2.9 Purified Water

Each Pharmacy shall have such additional equipment as is necessary to perform a specific procedure.

All equipment must be clean and must be maintained in such a manner that allows the pharmacist to accurately weigh, measure and compound ingredients.

3.4 Physical Facilities. Have sufficient size, space, sanitation, and environmental control for adequate distribution, dispensing and storage of drugs and devices. Such facilities shall include:

3.4.1 A dispensing area of adequate size and space for proper compounding, dispensing and storage of drugs and devices, to ensure the safety and well being of the public and pharmacy personnel.

3.4.2 Sufficient environmental control, i.e.

lighting, ventilation, heating and cooling to maintain the integrity of drugs and devices. The area in which drugs and devices are stored shall be accurately monitored using control devices to maintain room temperature between 59× and 86× Fahrenheit.

3.4.3 The pharmacy department or prescription area must contain a sink with hot and cold running water. It must be large enough to accommodate the equipment required by the Board so that the utensils can be properly washed and sanitized.

3.4.4 Suitable refrigeration with appropriate monitoring device. Refrigerators and freezers (where required) will be maintained at the USP/NF range:

Refrigerator - 36× to 46× Fahrenheit

Freezer - plus 4× to minus 14× Fahrenheit.

A sign with letters not less than 3/4" in height in the vicinity of the prescription department visible to the public which shows the name of the pharmacists employed at that pharmacy or the name of the pharmacist on duty.

3.5 Building Standards. An application to operate a new pharmacy must include (3) copies of blueprints drawn to scale of the proposed prescription department. The blueprints must include the following:

3.5.1 The requirements listed in §2534(F)(1) through (4).

3.5.2 A view of the partition surrounding the prescription department showing a five (5) foot height requirement measured from the floor. A section or sections totaling a maximum of twelve (12) ft. in length and at least three (3) ft. in height will be acceptable in all situations. The area(s) must be secured to the five (5) ft. level when the pharmacist or designated responsible person is not in the pharmacy department.

3.5.3 A partitioned area which assures patient privacy will be provided to facilitate counseling. This area must afford the patient privacy from auditory detection by any unauthorized person or persons. The minimum requirement would be a 9 square foot partitioned area.

3.5.4 The blueprints shall include the location of the sink, all doors, storage room, approved Schedule II controlled substance safe or cabinet, and the method of securing the prescription department from floor to ceiling, when the prescription department is closed and the remainder of the store is open.

3.5.5 The blueprints must include the type of alarm system to be installed, and the name, address and phone number of alarm provider. The alarm system, as required by Regulation 5 of the Delaware Controlled Substance Act, must be reviewed and approved for compliance by the Office of Narcotics and Dangerous Drugs.

3.5.6 The above requirements shall also apply for any remodeling or change of location of the prescription department. The pharmacist-in-charge or applicant for

permit must submit the blueprint requirements to the Delaware Board of Pharmacy and the Office of Narcotics and Dangerous Drugs prior to any construction and at least 15 days prior to the next scheduled Board of Pharmacy meeting for its review.

3.6 Security. When the pharmacist is off duty and the operation is open for business, the pharmacy department shall be physically or electronically secured from floor to ceiling. The partitioned off section required by 24 Del.C. §2534 must be five feet high measured from the floor. A conspicuous sign with letters not less than three inches in height, reading "PRESCRIPTION LABORATORY TEMPORARILY CLOSED, NO PROFESSIONAL SERVICES RENDERED," or words of similar import, must be posted in the front section of the operation or in front of the prescription area, room or partitioned off section where it can be seen by the public.

3.7 Board Interview. Applicants for permit to operate a pharmacy in the State of Delaware must appear before the Board for an interview. The owner or authorized official must be present in addition to the pharmacist-in-charge. Whenever there is a change of pharmacist-in-charge, if that person has never held that position in the State of Delaware, he/she must appear before the Board for an interview within ninety days after assuming the position.

Regulation 3.5.2 revised 6/16/97

Regulation 3.5.6 revised Effective date 10/11/98

**See 2 DE Reg. 683 (10/1/98)**

**See 6 DE Reg. 488 (10/1/02)**

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## **DEPARTMENT OF AGRICULTURE THOROUGHBRED RACING COMMISSION**

Statutory Authority: 3 Delaware Code,  
Section 10103 (3 **Del.C.** §10103)

**The Commission** issues these proposed rules pursuant to 3 *Del.C.* 10103 and 29 *Del.C.* 10115. The Commission will accept written comments from May 1, 2003 through May 30, 2003. The Commission will hold a public hearing on the proposed rule amendments on May 21, 2003 at 11:00 a.m. at Delaware Park, 777 Delaware Park Boulevard, Wilmington, DE. Written comments should be submitted to John Wayne, Administrator of Racing, Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901.

The Commission proposes the following three rule amendments: 1) amend Rule 1.28 to clarify that the definition of a "Meeting" to include all race dates approved by the Commission under 3 *Del.C.* 10122(c); 2) amend Rule 3.02(a) to clarify that the authority of the Stewards at the Meeting shall be during the period as required by the Commission; and 3) amend Rule 19.01(d) to provide that

one steward may hold a hearing during emergencies or during periods when there is no live racing.

### **Part 1 -- Definitions and Interpretations**

In the context of these Rules of Racing, the following words and phrases shall be construed as having the following special meanings:

#### **1.01 Added money:**

Cash, exclusive of trophy or other award, added by the Licensee to stakes fee paid by subscribers to form the total purse for a stakes race.

#### **1.02 Age:**

The number of years since a horse was foaled, reckoned as if such horse were foaled on January 1 of the year in which such horse was foaled.

#### **1.03 Arrears:**

All sums due by any permittee or registrant as reflected by his account with the Licensee or the Horsemen's Bookkeeper, including subscriptions, jockey fees, forfeitures, and any default incident to these rules.

#### **1.04 Authorized Agent:**

Any person currently registered as an agent for a registered-owner principal by virtue of a notarized appointment of agency properly and fully lodged with the Licensee.

#### **1.05 Betting Interest:**

A single horse, or more than one horse joined as a "mutuel entry" or joined in the "mutuel field", on which a single pari-mutuel wager may be placed.

#### **1.06 Bleeder:**

Any horse known to have bled from its nostrils during a workout or race or is found to have bled internally by endoscopic examination. See Rule 15.02, Paragraph (a).

#### **1.07 Breeder:**

Owner of the dam of a horse at the time such horse was foaled. A horse is "bred" at the place of its foaling.

#### **1.08 Claiming Race:**

Any race in which the ownership of every horse running therein may be transferred in conformity with these Rules.

#### **1.09 Closing:**

Time published by the Licensee after which entries for a race will not be accepted.

#### **1.10 Commission:**

The Delaware Thoroughbred Racing Commission. "Commissioner" is a member of the Commission.

#### **1.11 Day:**

Any 24-hour period beginning at 12:01 a.m. and ending at midnight. "Racing Day" is a day on which races are conducted. "Calendar Days" are those consecutive days counted irrespective of number of "Racing Days."

#### **1.12 Declaration:**

Withdrawal of a horse entered in a race prior to time of closing of entries therefor in conformance with these Rules.

#### **1.13 Disciplinary Action:**

That action taken by the Stewards, by the Licensee, or by the Commission, for a Rule violation; it can include suspension, revocation, voidance of a permit, authorization or registration, ejection or exclusion from the Licensee's grounds, or assessment of a forfeiture, or reprimand, or any combination thereof.

#### **1.14 Disqualification:**

An order of the Stewards revising the order of finish of a race.

#### **1.15 Entry:**

The act of nominating a horse for a race in conformance with these Rules. See "Mutuel Entry".

#### **1.16 Equipment:**

Accouterments, other than ordinary saddle, girth, pad, saddle cloth, and bridle carried by a horse, include whip, blinkers, tongue strap, muzzle, hood, noseband, bit, shadow roll, martingale, breast plate, bandages, boots, and racing plates or shoes.

#### **1.17 Exhibition Race:**

A race between horses of diverse ownership for which a purse is offered by the Licensee, but on which no pari-mutuel wagering is permitted.

#### **1.18 Field or Mutuel Field:**

A single betting interest involving more than one horse which is formed when the number of horses starting a race exceeds the numbering capacity of the totalizator and where all horses of a higher number are grouped in the "mutuel field".

#### **1.19 Forfeit:**

Money due by a permittee, registrant or other person to whom these Rules apply because of an error, fault, neglect of duty, breach of contract, or alternative order of the Stewards.

**1.20 Handicap Race:**

A race in which the weights to be carried by the horses therein are assigned by the Licensee's Handicapper with the intent of equalizing the chances of winning for all horses entered. A "free handicap" is a handicap for which no nominating fee is required to be weighted, but an entrance and/or starting fee may be required for starting therein.

**1.21 Horse:**

Any Thoroughbred, whether mare, gelding, colt or filly, which is registered as such with the Jockey Club in Lexington, Kentucky, or, for Steeplechase racing purposes, by the National Steeplechase Association in Fair Hill, Maryland and any Arabian whether mare, gelding, colt or filly which is registered as such with the Arabian Horse Registry of America, Inc. in Westminster, Colorado and for which an Identification Supplement has been issued.

In these rules of racing, unless otherwise noted, the use of the word "Thoroughbred" shall likewise apply to Arabian horses.

**1.22 Ineligible:**

A horse or person not qualified, not permitted, or not authorized under these Rules or conditions of a race to participate in a specified racing activity.

**1.23 Jockey:**

A rider currently authorized to ride in races as a Jockey, or Apprentice Jockey, or Amateur Jockey, or a provisional Jockey permitted by the Stewards to ride in two races prior to applying for a permit.

**1.24 Lessee:**

A registered Owner whose interest in a horse is a leasehold.

**1.25 Licensee:**

Any person, or persons, or corporation, licensed by the Commission to conduct a recognized race meeting at a particular racetrack within this State. When used herein, the word refers to that Licensee of the racetrack at which any matter or thing calling for the application of these Rules arises or occurs.

**1.26 Maiden:**

With respect to flat races, a horse which has never won a flat race at a recognized meeting in any country; a "maiden" which was disqualified after finishing first remains a "maiden"; race conditions referring to "maidens" shall be interpreted as meaning "maidens" at the time of starting.

In flat races a horse is still a maiden though a winner of a steeplechase or hurdle race, and in steeplechase and hurdle races a horse is still a maiden though a winner on the flat.

**1.27 Match Race:**

A race between two horses for which no other horses are eligible.

**1.28 Meeting:**

The entire period of consecutive days, exclusive of dark days, granted by the Commission to a Licensee for the conduct of racing, beginning at 12:01 a.m. of the first racing day and extending through a period ending at 11:59 p.m. after the last scheduled race on the last day, which includes all race dates approved by the Commission under 3 Del. C. §10122(c) including racing dates limited exclusively to the receiving and accepting of wagers or bets on electronically televised simulcasts. See "Recognized Meeting".

Rule 1.28 Rev. March 1976.

**1.29 Month:**

A calendar month.

**1.30 Mutuel Entry:**

A single betting interest involving two or more horses entered in the same race and joined for pari-mutuel purposes because of common ties as to ownership so that a wager on one horse joined in a "mutuel entry" is a wager on all horses joined in the same "mutuel entry".

**1.31 Mutuel Field:**

See "Field".

**1.32 Nominator:**

The person in whose name a horse is entered for a race.

**1.33 Owner:**

Any person who holds, in whole or in part, any right, title, or interest in a horse, or any lessee of a horse, who has been duly registered and approved by Licensee as a person responsible for such horse.

**1.34 Permittee:**

Any person authorized by or registered with and approved by Licensee to participate in any designated way in racing at the location where Licensee is authorized to conduct a racing meet. See "Registrant".

**1.35 Place:**

When used in the context of a single position in the order of finish in a race, "Place" means second; when used in the context of a pari-mutuel wagering, a "Place" wager is one involving a payoff on a betting interest which finished first or second in a race; when used in the context of multiple positions in the order of finish in a race, "Place or Placing" means finishing first, or second, or third. See "Unplaced".

## 1.36 Post:

The starting point of a race.

## 1.37 Post Position:

The relative place assigned to each horse, numbered from the inner rail across the track at the starting line, from which each horse is to start a race.

## 1.38 Post Time:

The advertised moment scheduled for the arrival of all horses at the starting point for a race.

## 1.39 Prize:

The combined total of any cash, plate, purse, premium, stake, trophy, reward or object of value awarded to the Owners of horses according to order of finish in a race. No race shall be authorized or permitted for a purse, stake or reward of less than \$700.00, except in the event of a split race, in which case the purse, stake or reward shall be equally divided.

Rule 1.30 Rev. July 1977.

## 1.40 Purse:

The gross cash portion of the prize for which a race is run.

## 1.41 Purse Race:

Any race for which entries close less than 72 hours prior to its running, and for which Owners of horses entered are not required by its conditions to contribute money toward its purse.

## 1.42 Race:

A running contest between horses, ridden by Jockeys, over a prescribed course, at a recognized meeting, during regular racing hours, for a prize.

## 1.43 Racing Official:

Any person appointed and designated as such, and authorized to perform the duties prescribed, by the Licensee of any race meeting authorized by the Commission.

## 1.44 Recognized Meeting:

Any meeting with regularly scheduled races for horses on the flat or over jumps, licensed by and conducted under rules promulgated by a governmental body, including any such authority which has reciprocal relations with the Jockey Club of Lexington, Kentucky, whose race records can be provided to a Licensee by the Jockey Club and any such authority which has reciprocal relations with the American Horse Registry of America, Inc. in Westminster, Colorado.

## 1.45 Registrant:

Synonymous with "Permittee".

## 1.46 Registration Certificate:

A document issued by the Jockey Club of Kentucky certifying as to the name, age, color, sex, pedigree and breeder of a horse as registered by number with the Jockey Club, shall be deemed to refer also to the document known as a "racing permit" issued by the Jockey Club in lieu of a "registration certificate" when a horse is recognized as a Thoroughbred for racing purposes in the United States, but is not recognized as a Thoroughbred for breeding purposes insofar as registering its progeny with the Jockey Club.

1.46(a) Reward: Any non-monetary prize, as defined in Rule 1.39, with a monetary value in excess of \$2,500.00, as determined by the fair market value of the prize, given to competitors in a race as an incentive to win, place or show.

The fair market value of any prize shall be determined by the commission. Evidence of fair market value shall include purchase price and resale value.

Rule 1.46(a) adopted 11/30/94.

## 1.47 Rules:

When used in the plural, shall be deemed to mean all current "Rules" promulgated by the Commission; when used in the singular, shall be deemed to be confined to the numbered "Rule", and subparagraphs thereof, wherein such mention is made.

## 1.48 Rulings:

All determinations, decisions, or orders of the Stewards duly issued in writing and posted.

Rule 1.48 Rev. March 1976.

## 1.49 Scratch:

Withdrawal of a horse entered for a race after time of closing of entries therefor in conformance with these Rules.

## 1.50 Scratch Time:

Time set by Licensee's Racing Secretary as a deadline for horsemen to indicate their desire to scratch out of a race.

## 1.51 Specimen:

Sample of blood, urine or saliva taken or drawn from a horse for chemical testing.

## 1.52 Stakes:

All fees paid by subscribers to an added-money or stakes race for nominating, eligibility, entrance, or starting, as may be required by the conditions of such race, such fees to be included in the purse.

**1.53 Stakes Race:**

A race which closes more than 72 hours in advance of its running and for which subscribers contribute money towards its purse.

**1.54 Starters:**

When referring to a horse -- a horse in a race when the starting-gate doors open in front of it at the moment the Starter (a Racing Official) dispatches the horses for a race.

**1.55 Stewards:**

Duly appointed Racing Officials with powers and duties as provided by these Rules.

**1.56 Subscription:**

Nomination or entry of a horse in a stakes race.

**1.57 Thoroughbred Racing:**

The conduct of running contests between horses, each of which is registered with the Jockey Club in Lexington, Kentucky and certified as having a Thoroughbred pedigree, or which is registered and certified by any other authority recognized by the commission, and each of which is ridden by a Jockey, under the auspices of an appropriate governmental regulatory body which has jurisdiction over such.

1.57(a) Trophy or Plate: For the purpose of calculating a prize or reward, a perpetual trophy or plate shall have no monetary value.

No trophy or plate shall be considered a reward, as defined by these rules and 3 Del. C. §10121 and 10141(c), unless the trophy or plate has a monetary value exceeding \$2500.00.

The fair value market of any trophy or plate shall be determined by the commission. Evidence of fair market value shall include purchase price and resale value.

Rule 1.57(a) adopted 11/30/94.

**1.58 Unplaced:**

Not among the first three horses finishing a race.

**1.59 Walkover:**

A race in which the only starter or all starters represent a single ownership.

**1.60 Weigh In:**

Presentation of a Jockey to the Clerk of Scales for weighing after a race.

Rule 1.57 Rev. March 1974.

**1.61 Weigh Out:**

Presentation of a Jockey to the Clerk of Scales for

weighing prior to a race.

**1.62 Weight for Age:**

A standard assignment of pounds to be carried by horses in races at specified distances during specified months of the year, scaled according to the age of the horse, as set out hereinafter in these Rules.

**1.63 Workout:**

A training exercise of a horse on the training or main track of a Licensee during which such horse is timed for speed over a specified distance.

**1.64 Year:**

Twelve consecutive months beginning with January and ending with December.

**1.65 Mandatory Safety Equipment: Helmets and Vests**

The helmets and vests that are to be worn while riding astride a horse or pony at any time, for any reason, while on the grounds of a racetrack that comes under the jurisdiction of the Delaware Racing Commission.

Rule 1.65 adopted 11/30/94.

**PART 3 -- STEWARDS****3.01 Qualifications for Stewards:**

No person shall qualify for appointment or approval as a Steward unless:

(a) In addition to any minimum qualifications promulgated by the Commission, all applicants for the position of Steward must be certified by a national organization approved by the Commission. An applicant for the position of steward must also have been previously employed as a steward, patrol judge, clerk of scales or other racing official at a thoroughbred racing meeting for a period of not less than forty-five days during three of the last five years, or have at least five years of experience as a licensed jockey who has not less than one year as a licensed racing official at a thoroughbred racing meeting or have ten years of experience as a licensed thoroughbred trainer who has served not less than one year as a licensed racing official at a thoroughbred racing meeting.

(b) He is a person of good moral character and unblemished reputation.

**See 2 DE Reg. 2042 (5/1/99)**

**3.02 Appointment of Stewards:**

There shall be three Stewards at each race meeting, each of whom shall be appointed by the Commission. If required by the Commission, biographical data setting out the experience and qualifications of the nominees shall be provided to the Commission by the Licensee. No Steward

shall serve until approved by the Commission.

(a) Stewards shall serve ~~from one minute after midnight on the day before the first racing day until one minute before midnight on the day after the last racing day of the race meeting for which they are appointed; provided, in the event a dispute or controversy arises during a race meeting which is not settled at the conclusion of the race meeting, then the power of the Stewards shall be extended over the period necessary to resolve the matter, or until the matter is referred or appealed to the Commission; during the period of the Meeting as required by the Commission~~

(b) Stewards may be replaced by the Commission at any time for failure to perform their duties properly and diligently;

(c) In the event that during a racing meet a Steward becomes ill, resigns, or is unable to serve for any reason, then the remaining Stewards, after obtaining approval of the Commission, shall nominate a successor or temporary Steward to the Commission for approval. In emergencies, a single Commissioner by telephone may approve appointment of a successor Steward.

**See 4 DE Reg. 174 (7/1/00)**

### 3.03 General Powers of the Stewards

The Stewards shall exercise immediate supervision, control and regulation of racing at the race meeting for which they are appointed. By way of illustration and without in any way limiting them, the powers of the Stewards shall include:

(a) Authority over all horses and all persons (except members of the Commission and its representatives, and except Licensee's management personnel and staff) on Licensee's grounds during a race meeting as to all matters relating to racing;

(b) To determine all questions, disputes, protests, complaints, or objections concerning racing (as distinguished from Licensee's business operations and affairs) which arise during a race meeting, and to enforce such determinations. All three Stewards shall be on Licensee's grounds before post time for the first race until conclusion of the last race. Except for good cause, all three Stewards shall be present in the Stewards' stand during the running of each race;

(c) It is preferred but not required that at least one Steward, or a designated representative of the Stewards, be present in the paddock at least 20 minutes before each race and remain there until the horses leave for the starting gate, to observe the conduct of all persons in and around the paddock and to inspect, with the Paddock Judge and Commission's Veterinarian, all horses for fitness;

(d) When requested by the Commission, to review all applications for registrations or permits to participate in racing, and, if requested by the Commission, to administer, or cause to be administered by technically qualified persons,

standard examinations to all first-time applicants to be registered as or receive a permit to be a Trainer, Jockey, Apprentice Jockey, Veterinarian, Dental Technician, or Farrier, and, when requested, make recommendations as to the qualifications of all applicants for registrations or permits to participate in racing;

(e) When requested by the Commission, to review all licenses, registration certificates, and all contracts, papers, and other documents pertaining to the sale or ownership of a horse, payment of purse money, Jockey and Apprentice Jockey contracts, appointments of agents, adoptions of racing colors or stable name, and advise upon the eligibility and appropriateness thereof for participation in racing in Delaware;

(f) To call for proof of eligibility of a horse or person to participate in a race if such is in question, and in the absence of sufficient proof to establish eligibility, the Stewards may rule such horse or person ineligible;

(g) To review stall applications and advise Licensee of undesirable persons, if any, among Owners and Trainers applying for stalls, and provide the Licensee with information pertaining to such undesirable persons;

(h) To supervise the taking of entries and receive all declarations and scratches, and determine all questions arising and pertaining to same. The Stewards may in their discretion refuse the entry of any horse by any person or refuse to permit a declaration or scratch, or may limit entries in any way. Upon suspicion of fraud or misconduct, the Stewards may excuse a horse or replace any Jockey or Trainer, or Racing Official other than a Steward;

(i) All other powers enumerated in these Rules, together with such other powers as are necessary to promote and maintain stringent standards for honesty, integrity, and propriety for Thoroughbred Racing in Delaware.

**See 4 DE Reg. 174 (7/1/00)**

### 3.04 Duties and Responsibilities of Stewards:

In addition to the duties and responsibilities necessary and pertinent to the general supervision, control and regulation of race meetings, and without limiting the authority of the Stewards to perform the same and other duties enumerated in these Rules, the Stewards shall have the following specific duties and responsibilities:

(a) To take cognizance of all misconduct or Rule infractions irrespective of whether complained of; to cause investigations to be made of all instances of possible Rule infractions; and to take such action as the Stewards may deem necessary to prevent a Rule infraction;

(b) At least one Steward, or his designated representative, shall be on Licensee's grounds from scratch time (or if not a racing day, when entries are first taken) until entries are closed. At least one Steward shall be present for the regular showing of racing films or video tapes.

(c) To suspend or revoke the registration or permit of a

participant in racing, or eject or exclude from Licensee's grounds or any part thereof any person, whether a registrant or permittee or not, upon reasonable belief that a violation of these Rules has or is about to occur;

(d) To interpret and enforce these Rules, and to determine all questions pertaining to a racing matter not specifically covered by these Rules in conformity with justice and the customs of the turf;

(e) To issue decisions or rulings pertaining to racing which shall, if the Stewards deem proper, vary any arrangement for the conduct of a race meeting, to include without limiting thereby, postponing a race, or canceling a race, ruling a race run as "no contest", or the like;

(f) To request and receive assistance from the Commission, Racing Officials, members of the Thoroughbred Racing Protective Bureau, track security police, state or local police, in the investigation of possible Rule infractions;

(g) To conduct hearings on all questions concerning racing matters;

(h) In the event a regularly named Jockey or Trainer or Racing Official other than a Steward is unable for any reason to perform, the Stewards may select a substitute therefor.

(i) To see that all pari-mutuel betting machines are locked not later than the commencement of the race; to cause the "Inquiry" sign to be posted on the infield odds board as promptly as possible after the horses have crossed the finish line in a race if any doubt is held by a Steward or Patrol Judge as to the fairness of the running of such race; to cause the "Objection" sign to be posted on the infield odds board upon the lodging of same; to cause the "Official" sign to be posted on the infield odds board after determining the official order of finish for purposes of pari-mutuel payoff;

(j) To review the patrol films or video tapes of each day's races before commencement of the successive day's races, and to draw up a list of riders (including all Apprentice Jockeys) whom the Stewards feel should review such films for instructional purposes and cause same to be posted in the Jockey's Room; the Patrol Judges shall assist in making up the film list and attend all film showings whenever their other duties permit;

(k) To maintain a daily log, reporting all actions taken by the Stewards on all controversies which arise during the day, such report to show name of track, date, weather, track conditions, claims, results of blood, saliva or urine tests to the extent available, rulings issued, and any other circumstances or condition regarded as unusual, such reports to be signed by all Stewards participating in such action and filed within 24 hours at such place as the Commission may designate;

(l) To make periodic inspections of the barn area and check track security; to make occasional, informal visits to the Jockeys' Room and observe weighing out and check security; such inspections and observations so made shall be

noted in the Stewards' Report;

(m) To maintain a Minute Book which shall contain a detailed written record of all questions, disputes, protests, complaints or objections brought to the attention of the Stewards, summary of interviews taken thereon, reports of investigations thereon, together with rulings issued thereon; if a ruling is not unanimous, the dissenting Steward shall record his or her reasons for such dissent; such Stewards' Minute Book shall be available to the Commission for inspection at all times, but shall not be open to public inspection;

(n) When requested to do so, the Stewards shall submit to the Commission a written report setting out the condition of the meeting and Licensee's grounds, together with any recommendation for the improvement thereof which they may deem appropriate.

(o) To impose fines upon any corporation, association or person participating in any Thoroughbred horse race meet at which pari-mutual wagering is conducted, other than as a patron, and whether licensed or not by the Commission, for a violation of any provision of 3 Del. C. chapter 101 or these Rules and Regulations.

The Stewards may not impose a fine in excess of \$2500.00. If it is at any time deemed appropriate that a larger fine should be imposed, the Stewards shall so recommend to the Commission and shall refer the matter at hand forthwith to the Commission. The Stewards shall have the power to refer any matter before them to the Commission at any time if it appears proper because of the complexity, severity, uniqueness or extent of the activities involved or likely to be involved. Included within these powers is the authority to impose partial sanctions, such as a conditional limitation on any person's use of facilities or of the enclosure.

(p) In suspensions of jockeys for any offense other than an offense involving fraud, the:

1. Effective date of the suspension is determined at the discretion of the stewards; and

2. Jockeys serving a suspension of ten days or less are permitted to ride in a designated race during the period of a suspension if the:

(a) Race is a stakes race with a purse of \$25,000 or more;

(b) Jockey is named not later than at the time set for the close of entries for the race; and

(c) Jockey agrees to serve an additional day of suspension in place of the day in which the jockey rides in a designated race.

Revised 10/20/93

Revised 5/26/93

## PART 19 -- HEARINGS, REVIEWS AND APPEALS

### 19.01 Procedure Before Stewards:

(a) Before holding any Stewards' hearing provided for under these Rules, notice in writing must be given to any party charged with a violation, other than a routine riding offense occurring in a race, unless such notice is waived in writing by the person charged.

(b) The notice required by the preceding subsection shall include:

1. Identification of the specific Rule or Rules involved, the infraction for which he is charged and a brief statement of the facts supporting such charge.

2. The time and place of hearing.

3. The statement that the party charged may be represented by legal counsel or by a representative of any racing trade organization of which he is a member.

(c) All Stewards' hearings shall be closed and the Stewards shall cause no public announcement to be made concerning a matter under investigation until the conclusion of the hearing and the party charged has been notified of the decision.

(d) The hearing shall be conducted by no less than two of the Stewards in such a manner as to ascertain and determine the substantial rights of the parties involved and shall not be bound by technical rules of procedure and evidence. In emergencies during the live racing meet or during periods when there is no live racing, a hearing may be conducted by only one Steward.

(e) All testimony at such hearings shall be given under oath. A record shall be made of the hearing, either by use of a tape recorder or by court reporter's transcript, or otherwise, if funds for such are made available from any source. The Stewards will not be required to receive testimony under oath in cases where their ruling is based upon a review of the video tapes of a race.

(f) If, at the conclusion of their hearing, the Stewards find that a Rule has been violated, they promptly shall issue a written ruling which sets forth the name of every person charged with a violation, the Rule violated, their finding as to the violation of such Rule and the penalty affixed. Copies of such rulings shall be delivered to each party in interest and to the Commission and the Licensee, and posted in the Racing Secretary's office.

### 19.02 Review and Appeal:

Any party who is penalized by any order or ruling of the Stewards may apply to the Commission for a review of such Stewards' order or ruling.

### 19.03 Application for Review:

An application to the Commission for the review of a Steward's order or ruling must be made within forty-eight (48) hours after such order or ruling is issued by written or

oral notice and shall:

- (a) Be in writing and addressed to the Commission's Administrator of Racing, accompanied by a filing fee in the amount of \$250;

- (b) Contain the signature of the applicant and the address to which notices may be mailed to applicant;

- (c) Set forth the order or ruling requested to be reviewed and the date thereof;

- (d) Succinctly set forth the reasons for making such application;

- (e) Request a hearing;

- (f) Briefly set forth the relief sought; and

- (g) Provide assurance to the Commission that all expenses occasioned by the appeal will be borne by the applicant; and

- (h) Contain a sworn, notarized statement that the applicant has a good faith belief that the appeal is meritorious and is not taken merely to delay the penalty imposed by the stewards.

**See 3 DE Reg. 1542 (5/1/00)**

### 19.04 Disposition of Review Application:

After consideration of any such application for review, the Commission may grant the application, defer it or reject it. The applicant shall be advised of the Commission's disposition of his application for review.

### 19.05 Commission Hearing:

If the Commission grants any such application for review, before holding any hearing thereon, it shall:

- (a) Give written notice forthwith to the applicant and all other necessary parties personally or by mail, including:

1. Time and place of such hearing as designated by the Commission Chairman, but such time shall not be less than five (5) days and no more than thirty (30) days after service of notice unless at the request of a party and in order to provide a fair hearing.

2. Except to applicant, a copy of the application for review.

- (b) The Commission may request the Attorney General to appoint a special prosecutor to carry the burden of proof showing a Rule violation if the matter involves a Rule violation and requires a proceeding of an adversary nature, such prosecutor being an attorney who has had no prior participation in the matter on review.

The Commission may request the Attorney General, or a member of his staff other than the special prosecutor, to serve as law officer for the Commission to assist the presiding officer in rendering decisions of a judicial nature.

- (c) The Commission shall permit all parties that so desire to be represented by counsel and, to the extent it deems necessary or appropriate, shall permit all parties to respond and present evidence and argument on all issues involved.

(d) The Commission may issue, under the hand of its Chairman and the seal of the Commission, subpoenas for the attendance of witnesses and the production of books, papers and documents, before the Commission, and may administer oaths or affirmations to the witnesses whenever, in the judgment of the Commission, it may be necessary for the effectual discharge of its duties.

If any person refuses to obey any subpoena or to testify or produce any books, papers or documents, then any Commissioner may apply to the Superior Court of the county in which he or the Commission may be sitting and, thereupon, the Court shall issue its subpoena requiring the person to appear and to testify or produce any books, papers or documents.

Whoever fails to obey or refuses to obey a subpoena of the Superior Court shall be guilty of contempt of court and shall be punished accordingly.

False swearing on the part of any witness shall be deemed perjury and shall be punished as such.

(e) All tape recordings or stenographic recordings taken and transcriptions made of the hearing or any part thereof shall be paid for by such parties as request that such a tape or stenographic record be made of the hearing, except that additional transcripts thereof shall be paid for by the person desiring such copies.

(f) The Commission may exclude evidence that is irrelevant, immaterial or unduly repetitious and may admit evidence that would be inadmissible under the Civil Rules of Procedure but is evidence of the type commonly relied upon by reasonably prudent men in the conduct of their affairs.

(g) All or part of the evidence may be received in written form if the interest of the appearing parties will not be substantially prejudiced thereby.

(h) The Commission may take official notice of technical facts or customs or procedures common to racing.

(i) The Commission may make an informal disposition of the matter by stipulation, agreed settlement, consent order or default.

(j) Upon conclusion of the hearing, the Commission shall take the matter under advisement, shall render a decision as promptly as possible and shall issue a ruling in final adjudication of the matter. Such ruling shall set forth the name of every person charged with a Rule violation; the Rule number and pertinent parts of the Rule alleged to have been violated; a separate statement of reasons for the decision; and penalties fixed by the Commission, if any. Copies of such ruling shall be delivered to each party in interest, posted in the Racing Secretary's office of the Licensee where the matter arose and forwarded to the national office of the National Association of State Racing Commissioners.

(k) The Commission, for just cause, may refund the filing fee to the applicant.

Added: 9/27/94

19.06 Continuances:

(a) All applications for a continuance of a scheduled hearing shall be in writing, shall set forth the reasons therefor and shall be filed with the Commission's Administrator of Racing after giving notice of such application by mail or otherwise to all parties or their attorneys, including counsel for the stewards. The Commission will not consider any continuance request from counsel for an appellant unless counsel has filed a written entry of appearance with the Commission. For attorneys who are not members of the Delaware bar, those attorneys must comply with the provisions of Delaware Supreme Court Rule 72 for admission pro hac vice before the Commission. The Commission will not consider any continuance request from attorneys who are not members of the Delaware bar unless and until that attorney has been formally admitted under Delaware Supreme Court Rule 72 as the attorney of record for the appellant.

(b) When application is made for continuance of a cause because of the illness of an applicant, witness or counsel, such application shall be accompanied by a medical certificate attesting to such illness and inability.

(c) An application for continuance of any hearing must be received by the Commission at least ninety-six (96) hours prior to the time fixed for the hearing. An application received by the Commission within the 96-hour period will not be granted except for extraordinary reasons. The Commission will not consider any request for a continuance absent evidence of good cause for the request. A failure by an appellant to take reasonable action to retain counsel shall not be considered good cause for a continuance.

(d) If the Commission approves the application for continuance, it shall, concurrently with such postponement, set a date for the continued hearing.

**See 3 DE Reg. 1542 (5/1/00)**

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## **DEPARTMENT OF EDUCATION**

14 DE Admin. Code 101

Statutory Authority: 14 Delaware Code,  
Section 122(d) (14 Del.C. §122(d))

### **Education Impact Analysis**

**Pursuant To 14 DEL. C. Section 122(d)**

### **101 Delaware Student Testing Program**

#### **A. Type of Regulatory Action Required**

Amendment to Existing Regulation

#### **B. Synopsis of Subject Matter of the Regulation**

The Secretary of Education seeks the consent of the

State Board of Education to amend regulation 101 Delaware Student Testing Program. The amendment to 2.0 Levels of Performance adds the statement “Beginning with the 2006 assessments, there shall be the same five levels of performance for students in grades 2, 4, 6, 7 and 9 in reading, mathematics and writing”. The amendments to the last sentence of 2.1 through 2.5 simply remove the reference to the standard setting process. The amendment to 4.1.1 clarifies the reasons for assigning an Individual Improvement Plan to a student. These changes reflect changes made to state and federal statutes.

### **C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation continues to help improve student achievement and is being amended to comply with changes in federal and state laws.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation continues to help insure that all students receive an equitable education and is being amended to comply with changes in state and federal laws.

3. Will the amended regulation help to ensure that all students’ health and safety are adequately protected? The amended regulation addresses the state’s student testing program and is being amended to comply with changes in state and federal laws.

4. Will the amended regulation help to ensure that all students’ legal rights are respected? The amended regulation addresses the state’s student testing program and is being amended to comply with changes in state and federal laws.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation will continue to preserve the necessary authority and flexibility of decision making at the local board and school level within the requirements of state and federal laws.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation, because of the changes in the state and federal laws, does increase some of the reporting requirements and administrative responsibilities at the local board and school levels.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the state accountability program will remain in the same entity.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic

subjects of mathematics, science, language arts and social studies? The amended regulation continues to be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the amended regulation? The state statute requires the Department of Education to promulgate this regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? The changes to the state and federal statutes will probably increase costs to local school boards but additional funds are available from the federal government.

### **101 Delaware Student Testing Program**

1.0 Definition: The Delaware Student Testing Program (DSTP) shall include the assessments of all students in grades K-10 in the areas of reading, writing and mathematics and the assessments of all students in grades 4, 6, 8, and 11 in the areas of science and social studies. The DSTP shall also include the participation of Delaware students in the National Assessment of Educational Progress (NAEP) as determined by the Department of Education. All districts and charter schools shall participate in all components of the DSTP including field test administrations.

1.1 All students in said grades shall be tested except that students with disabilities and students with limited English proficiency shall be tested according to the Department of Education’s Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency, as the same, may from time to time be amended hereafter.

1.2 The Department of Education shall determine the dates upon which the DSTP will be administered, and will advise the school districts and charter schools of those dates.

2.0 Levels of Performance: There shall be five levels of student performance relative to the State Content Standards on the assessments administered to students in grades 3, 5, 8 and 10 in reading, mathematics and writing and to students in grades 4, 6, 8 and 11 in social studies and science. Beginning with the 2006 assessments, there shall be the same five levels of performance for students in grades 2, 4, 6, 7 and 9 in reading, mathematics and writing. Said levels are defined and shall be determined as follows:

2.1 Distinguished Performance (Level 5): A student’s performance in the tested domain is deemed exceptional. Students in this category show mastery of the Delaware Content Standards beyond what is expected of students performing at the top of the grade level. Student

performance in this range is often exemplified by responses that indicate a willingness to go beyond the task, and could be classified as "exemplary." The cut points for Distinguished Performance shall be determined by the Department of Education, with the consent of the State Board of Education, ~~using test data and the results from the Standard Setting process.~~

2.2 Exceeds the Performance Standard (Level 4): A student's performance in the tested domain goes well beyond the fundamental skills and knowledge required for students to Meet the Performance Standard. Students in this category show mastery of the Delaware Content Standards beyond what is expected at the grade level. Student performance in this range is often exemplified by work that is of the quality to which all students should aspire, and could be classified as "very good." The cut points for Exceeds the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education, ~~using advice from a standard setting body. The standard setting body shall utilize a proven method for setting standards on test instruments that utilizes student work in making the recommendation.~~

2.3 Meets the Performance Standard (Level 3): A student's performance in the tested domain indicates an understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students in this category show mastery of the Delaware Content Standards at grade level. Student performance in this range can be classified as "good." The cut points for Meets the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education, ~~using advice from a standard setting body. The standard setting body shall utilize a proven method for setting standards on test instruments that utilizes student work in making the recommendation.~~

2.4 Below the Performance Standard (Level 2): A student's performance in the tested domain shows a partial or incomplete understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students who are Below the Performance Standard may require additional instruction in order to succeed in further academic pursuits, and can be classified as academically "deficient." The cut points for Below the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education, using test data and the results from the Standard Setting process.

2.5 Well Below the Performance Standard (Level 1): A student's performance in the tested domain shows an incomplete and a clearly unsatisfactory understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students who are Well Below the Performance Standard have demonstrated broad deficiencies in terms of the standards indicating that they are

poorly prepared to succeed in further academic pursuits and can be classified as "very deficient." The cut points for Well Below the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education, ~~using test data and the results from the Standard Setting process.~~

### 3.0 Other Indicators of Student Performance

3.1 Local school districts and charter schools may consider other indicators of student performance relative to the state content standards pursuant to 14 **Del.C.** §153(b) when determining the placement of students who score at Level 1 or Level II on a mandated retake of a portion of the DSTP. The only other indicators of student performance that may be considered by a local school district or charter school are: student performance on district administered tests pursuant to 14 **Del.C.** §153(e)(1); student performance on end-of-course assessments; student classroom work products and classroom grades supported by evidence of student work that demonstrates a student's performance pursuant to 14 **Del.C.** §153(a).

3.2 Any local school district or charter school planning to use other indicators of student performance shall submit the proposed indicators to the Department of Education by September 1st of each year.

3.2.1 Any such submission must include a demonstration of how an indicator of student performance aligns with and measures state content standards and the level of performance required to demonstrate performance equivalent to meeting state content standards.

3.2.2 Any proposed indicators of student performance must be approved by the Department of Education following consultation with the Student Assessment and Accountability Committee and the State Board of Education.

3.3 An academic review committee composed of educators in the student's local school district or charter school may then determine if a student has demonstrated proficient performance relative to the state content standards using evidence from the other indicators of student performance as approved by the Department of Education.

3.3.1 The academic review committee shall be composed of two classroom teachers from the student's tested grade, one classroom teacher from the grade to which the student may be promoted, one guidance counselor or other student support staff member and two school building administrators.

3.3.2 The supervisor of curriculum or instruction for the school district or charter school or his/ her designee shall chair the committee.

3.3.3 Placement of students with disabilities who are eligible for special education and related services is determined by the student's IEP team.

## 4.0 Individual Improvement Plan (IIP)

4.1 The following students are required to have an Individual Improvement Plan: Students who score below Level 3 Meets the Standard, on the reading portion of the 3<sup>rd</sup>, 5<sup>th</sup> or 8<sup>th</sup> grade Delaware Student Testing Program or the mathematics portion of the 8<sup>th</sup> grade Delaware Student Testing Program shall have an Individual Improvement Plan prepared by school personnel and signed by the teacher(s), principal or designee and a parent or legal guardian of the student.

4.1.1 Students assessed on the DSTP in grades K, 1, 2, 4, 6, 7, and 9 who are not progressing satisfactorily toward the standards or who score at Level 1 or Level 2 in reading shall have an Individual Improvement Plan prepared by school personnel and signed by the teacher(s), principal or designee and a parent or legal guardian of the student. Students assessed on the DSTP in grades 6, 7, and 9 who are not progressing satisfactorily toward the standards or who score at Level 1 or Level 2 in mathematics shall have an Individual Improvement Plan prepared by school personnel and signed by the teacher(s), principal or designee and a parent or legal guardian of the student.

4.2 The Individual Improvement Plan shall be on a form adopted by the student's school district or charter school. The IIP shall be placed in a student's cumulative file and shall be updated based on the results of further assessments. Such assessments may include further DSTP results as well as local assessments, classroom observations or inventories. For students with an Individualized Education Program (IEP), the IEP shall serve as the Individual Improvement Plan (IIP).

4.3 The Individual Improvement Plan shall at a minimum identify a specific course of study for the student that the school will provide and the academic improvement activities that the student shall undertake to help the student progress towards meeting the standards. Academic improvement activities may include mandatory participation in summer school, extra instruction and/or mentoring programs.

4.4 Individual Improvement Plan shall be prepared by school personnel and signed by the teacher(s), principal or designee and the parent or legal guardian of the student. A parent or the student's legal guardian must sign and return a copy of the student's Individual Improvement Plan to the student's school by the end of the first marking period.

4.5 Disputes initiated by a student's parent or legal guardian concerning the student's IIP shall be decided by the academic review committee. Any dispute concerning the content of a student's IEP is subject to resolution in conformity with the Regulations, Children with Disabilities.

5.0 Summer school programs for students in grades 3, 5, and 8 as required pursuant to 14 *Del.C.* § 153.

5.1 Summer school programs shall be provided by the student's district of residence with the following exceptions:

5.1.1 Where a student attends another district as a result of school choice or attends a charter school the district of choice or charter school shall provide the summer school program.

5.1.2 Where by mutual agreement of both districts or a charter school and the parent or guardian of the student another district provides services.

5.1.3 Where by mutual agreement of the student's school district or a charter school and the student's parent or guardian, the parent or guardian arranges for summer school instruction to be provided outside the public school system. Under such conditions the parent or guardian shall be responsible for the cost of providing non-public school instruction unless the districts or the charter school and parents or guardian agree otherwise. Requirements for secondary testing shall be met.

5.1.4 Where a student has been offered admission into a vocational technical school district or charter school that district or charter school may provide summer school services.

6.0 High School Diploma Index As Derived from the 10<sup>th</sup> Grade Assessments Pursuant to 14 *Del.C.* § 152.

6.1 Students who graduate from a Delaware public high school, as members of the class of 2004 and beyond shall be subject to the diploma index as stated herein.

6.1.1 Beginning in 2002 for the graduating class of 2004, the Department shall calculate a diploma index based upon the student's grade 10 Delaware Student Testing Program performance levels in reading, writing, and mathematics.

6.1.2 Beginning in 2005 for the graduating class of 2006, the Department shall calculate a diploma index based upon the student's grade 10 Delaware Student Testing Program performance levels in reading, writing, mathematics and the grade 11 Delaware Student Testing Program performance levels in science and social studies.

6.2 A student may choose to participate in additional scheduled administrations of the DSTP in order to improve his/her diploma index. The highest earned performance level in each content area will be used in calculating the diploma index.

6.3 The diploma index shall be calculated by multiplying the earned performance level in each content area by the assigned weight and summing the results.

6.3.1 Beginning with the year 2002, the assigned weights shall be .40 for reading, .40 for mathematics, and .20 for writing for the graduating class of 2004.

6.3.2 Beginning with the year 2005, the assigned weights shall be .20 for reading, .20 for

mathematics, .20 for writing, .20 for science and .20 for social studies for the graduating class of 2006.

6.4 Students shall qualify for State of Delaware High School diplomas as follows:

6.4.1 A student shall be awarded a Distinguished State Diploma upon attainment of a diploma index greater than or equal to 4.0 provided that the student has attained a Performance Level 3 or higher in each content area and provided that the student has met all other requirements for graduation as established by the State and local districts or charter schools.

6.4.2 A student shall be awarded a Standard State Diploma upon attainment of a diploma index greater than or equal to 3.0 and provided that the student has met all other requirements for graduation as established by the State and local districts or charter schools.

6.4.3 A student shall be awarded a Basic State Diploma upon attainment of a diploma index less than 3.0 and provided that the student has met all other requirements for graduation as established by the State and local districts or charter schools.

6.5 Parent or Guardian Notification: Within 30 days of receiving student performance levels and/or diploma indices, school districts and charter schools shall provide written notice of the same and the consequences thereof to the student's parent or legal guardian.

7.0 Security and Confidentiality: In order to assure uniform and secure procedures, the Delaware Student Testing Program shall be administered pursuant to the Delaware Student Testing Program Coordinators Handbook, as the same, may from time to time be amended hereafter.

7.1 Every district superintendent, district test coordinator, school principal, school test coordinator and test administrator shall sign the certification provided by the Department of Education regarding test security before, during and after test administration.

7.2 Violation of the security or confidentiality of any test required by the Delaware Code and the Regulations of the Department of Education shall be prohibited.

7.3 Procedures for maintaining the security and confidentiality of a test shall be specified in the appropriate test administration materials in 14 Del.C. §170 through §174.

7.4 Procedures for Reporting Security Breaches

7.4.1 School Test Coordinators shall report any questionable situations to the District Test Coordinators immediately.

7.4.2 District Test Coordinators shall report all situations immediately to the State Director of Assessment and Analysis.

7.4.2.1 Within 5 days of the incident the District Test Coordinator shall file a written report with the State Director of Assessment and Analysis that includes the

sequence of events leading up to the situation, statements by everyone interviewed, and any action either disciplinary or procedural, taken by the district.

7.4.2.2 Following a review of the report by the State Director of Assessment and Analysis and the Associate Secretary of Education for Assessment and Accountability, an investigator from the State Department of Education will be assigned to verify the district report.

7.4.2.3 Within 10 days of the receipt of the report from the District Test Coordinator, the assigned investigator shall meet with the district personnel involved in the alleged violation. The meeting will be scheduled through the District Test Coordinator and the investigator shall be provided access to all parties involved and/or to any witnesses.

7.4.2.4 The investigator shall report the findings to the Associate Secretary for Assessment and Accountability. Following the review the Associate Secretary shall make a ruling describing any recommendations and or required actions.

7.4.2.5 The ruling shall be delivered within 10 days of the receipt of all reports and information and records shall be kept of all investigations.

8.0 Procedures for reviewing questions and response sheets from the Delaware Student Testing Program (DSTP)

8.1 School personnel, local school board members and the public may request to review the Delaware Student Testing Program (DSTP) questions. In order to review the DSTP questions individuals shall make a request in writing to the State Director of Assessment and Analysis for an appointment at the Department of Education.

8.1.1 At the time of the appointment, the individual shall: provide proper identification upon arrival, sign a confidentiality document, remain with a Department of Education staff member while reviewing the test questions and take nothing out of the viewing area.

8.1.2 The Department of Education's responsibility is to do the following: schedule the review at a mutually agreeable time, notify the local district that the review has been requested, review the procedures for looking at the DSTP questions, assist the individual(s) as requested and keep records of all reviews.

8.1.3 In cases where more than one individual is requesting to view the DSTP questions, the local school district shall send a representative to sit in on the review.

8.2 Parent/guardian(s) may request to view the test questions and their student's responses. In order to review the DSTP questions and their student's responses parents/guardian(s) shall make a request in writing to the State Director of Assessment and Analysis for an appointment at the Department of Education. The Department shall be allowed sufficient time to secure a copy of student responses from the test vendor.

8.2.1 At the time of the appointment, the individual shall: provide proper identification upon arrival, sign a confidentiality document, remain with a Department of Education staff member while reviewing the test questions and take nothing out of the viewing area.

8.2.2 The Department of Education's responsibility is to do the following: schedule the review at a mutually agreeable time, notify the local district that the review has been requested, review the procedures for looking at the DSTP questions, assist the individual(s) as requested and keep records of all reviews.

8.2.3 In the case of the stand-alone writing response, the parent/guardian(s) may go to the local school district or charter school to view the test responses.

**See 4 DE Reg. 464 9/1/00**

**See 5 DE Reg. 620 (9/1/01)**

## 9.0 Invalidations and Special Exemptions

9.1 Invalidations for students in grades 3, 5, 8 and 10 for reading, writing and mathematics and grades 4,6,8 and 11 for science and social studies: Invalidations are events or situations that occur during the administration of the DSTP assessments which may result in a statistically unreliable score report for a student. Invalidations may occur as a result of either: intentional student conduct, including but not limited to cheating and disruptive behavior; or unforeseen and uncontrollable events, including but not limited to onset of illness.

9.1.1 Reporting of situations that occur during testing.

9.1.1.1 The school building principal or designee shall notify the District Test Coordinator in writing within 24 hours of events or situations that the principal reasonably believes may result in an invalid score report for a student(s).

9.1.1.2 The District Test Coordinator shall notify the Department of Education staff person assigned to the district for test security purposes as soon as the Coordinator learns of events or situations which may result in invalidation(s).

9.1.1.2.1 The District Test Coordinator shall submit a DSTP Incident Report Form within three business days of the events. Written reports from the building principal or designee and any staff must be included with the DSTP Incident Report Form.

9.1.1.3 The Director of Assessment for the Department of Education shall determine whether the reported events warrant invalidating a student(s) score and such decision shall be final.

9.1.1.3.1 If the Director determines that the events also warrant a security investigation the matter will be referred to the Department of Education staff person assigned to the district for test security purposes.

9.1.2 Consequences of invalidations.

9.1.2.1 Whenever the Director of Assessment for the Department of Education determines that a student's assessment test score is invalid as a result of an intentional act of the student, the student will be assigned a performance level 1 (well below standard) for that assessment and will be subject to such consequences as may otherwise be imposed pursuant to law for students who score at performance level 1 of the assessment; the assessment test score of any such student shall be reported and counted in the test scores of the student's school for all purposes, including school and district accountability.

9.1.2.2 Whenever the Director of Assessment for the Department of Education determines that a student's assessment test score is invalid as a result of an event which is unforeseen and beyond the control of the student and if the student is unable to participate in a regularly scheduled test make-up, the student shall not be subject to any of the consequences as would otherwise be imposed pursuant to law; the assessment score of any such student shall not be reported or counted in the test scores of the student's school for any purpose, including school and district accountability.

9.2 Special Exemptions for students in grades 3, 5, 8, and 10 for reading, writing and mathematics and grades 4, 6, 8 and 11 for science and social studies: A special exemption may be available when a student's short-term, physical or mental condition prevents the student from participating in the DSTP assessments even with accommodations, or when an emergency arising before the start of the test prevents the student's participation.

9.2.1 Special exemptions for students who are tested according to the Department of Education's Guidelines for Inclusion of Students with Disabilities and Students with Limited English Proficiency are also available as provided in the Guidelines.

9.2.2 Requests for special exemptions based on physical or mental condition.

9.2.2.1 Special exemptions based on a student's physical or mental condition may be available for students suffering from terminal illnesses or injuries or receiving extraordinary short-term medical treatment for either a physical or psychiatric condition. Requests for exemptions on these grounds shall be accompanied by a signed statement from the student's treating physician which; describes the nature of the terminal condition or extraordinary treatment; confirms that the terminal condition or the extraordinary treatment arose more than 60 calendar days before the test administration for which the exemption is requested and has substantially prevented the student from accessing educational services since its inception ; and confirms that the condition or treatment is expected to be resolved or completed within 12 months of the test administration.

9.2.2.2 The District Test Coordinator shall submit a completed Request for Special Exemption Form to

the Director of Assessment for the Department of Education at least 60 calendar days before the first day of testing. A copy of the physician's statement required in the preceding subsection will accompany the request.

9.2.2.2.1 The Director of Assessment shall convene a review committee of not less than three Department of Education staff to review requests for special exemptions. The Director shall submit a recommendation on each request to the Associate Secretary for Assessment and Accountability.

9.2.2.2.2 The Associate Secretary shall decide whether a request for a special exemption based on physical or mental conditions should be granted. The Associate Secretary shall notify the District Test Coordinator of the decision. The Associate Secretary's decision shall be final.

9.2.3 Request for special exemptions based on emergency.

9.2.3.1 Emergencies are unforeseen events or situations arising no more than 60 calendar days before the start of the test administration. They may include, but are not limited to, death in a student's immediate family, childbirth, accidents, injuries and hospitalizations.

9.2.3.2 Special exemptions due to an emergency may be requested for the entire test or for one or more content areas, as the district determines appropriate.

9.2.3.3 The District Test Coordinator shall notify the Director of Assessment for the Department of Education as soon as the Coordinator learns of events or situations which may result in a request for a special exemption due to an emergency.

9.2.3.3.1 The District Test Coordinator shall submit a completed DSTP Request for Special Exemption Form to the Director of Assessment for the Department of Education within 7 calendar days of the last day for make up testing. Requests for exemptions on these grounds shall be accompanied by a signed statement from the student's treating physician which describes the nature of the situation.

9.2.3.3.2 The Director of Assessment shall convene a review committee of not less than three Department of Education staff to review requests for special exemptions due to an emergency. The Director shall submit a recommendation on each request to the Associate Secretary for Assessment and Accountability.

9.2.3.3.3 The Associate Secretary shall decide whether a request for a special exemption based on an emergency should be granted. The Associate Secretary shall notify the District Test Coordinator of the decision. The Associate Secretary's decision shall be final.

9.2.4 Consequences of Special Exemptions.

9.2.4.1 Any special exemption granted by the Department of Education is limited to the testing period for which it was requested and does not carry forward to future

test administrations.

9.2.4.2 Students who are granted a special exemption shall not be reported or counted in the school's test scores for any purpose, including school and district accountability.

9.2.4.3 Students who are granted a special exemption shall not be subject to any of the student testing consequences for students in grades 3, 5, or 8 for the testing period to which the exemption applies.

**See 5 DE Reg. 2115 (5/1/02)**

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**Education Impact Analysis  
Pursuant To 14 DEL. C. Section 122(d)**

**103 School Accountability for Academic Performance**

**A. Type of Regulatory Action Required**

Amendment to Existing Regulation

**B. Synopsis of Subject Matter of the Regulation**

The Secretary of Education seeks the consent of the State Board of Education to amend regulation 103 School Accountability for Academic Performance by changing the regulation to conform to the changes in the state and federal statutes which address school, district and state accountability for student performance. The title of the amended regulation has been changed to Accountability for Schools, Districts and the State. The amended regulation defines Adequate Yearly Progress (AYP) as it affects student achievement and discusses how AYP is determined and calculated. The amended regulation addresses other academic indicators, assessment criteria and the school and district review process. The five annual performance classifications for schools, districts and the State are also defined and the consequences are discussed.

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation continues to help improve student achievement and is being amended to comply with changes in state and federal statutes.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will continue to help ensure that all students receive an equitable education and is being amended to comply with changes in state and federal statutes.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses school, district and State accountability for student performance and is being amended to comply with changes in state and federal statutes.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses school, district and State accountability for student performance and is being amended to comply with changes in state and federal statutes.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation will continue to preserve the necessary authority and flexibility of decision making at the local board and school level within the requirements of the state and federal statutes.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation, because of the changes in the state and federal statutes, does increase some of the reporting requirements and administrative responsibilities at the local board and school levels.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making and accountability for addressing the subject to be regulated will continue to remain in the same entity.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation continues to be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the amended regulation? The state statute requires the Department of Education to promulgate this regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? The changes to the state and federal statutes will probably increase costs to local school boards and schools but additional funds are available from the federal government.

### **103 School Accountability for Academic Performance**

**1.0 Accountability School:** The school to which a student's performance is assigned shall be the Accountability School. Except as defined in sections 1.1 to 1.3 the Accountability School shall be the school that provided the majority of instructional services to that student in a given school year so long as the student was enrolled in the school for more than 530 school hours or more than 90 school days. No student shall have his/her performance assigned to more than one

Accountability School in a given school year.

~~1.1 Except as in section 1.1.1, for students enrolled in an intra-district intensive learning center or intra-district special school or program operating within one or more existing school facilities the school facility in which the student is served shall be the Accountability School.~~

~~1.1.1 If in such a program the number of students included in a School Composite Score would be greater than or equal to 30 a school district may elect to define the program as an Accountability School.~~

~~1.1.2 Within 30 days of request by the Secretary of Education school districts shall inform the Secretary of Education in writing of any Accountability Schools they elect to define pursuant to section 1.1.1. Such definitions may not be changed for four measurement cycles.~~

~~1.2 For students enrolled in inter-district special schools or programs that have an agreement to serve students from multiple school districts that school or program shall be the Accountability School provided the number of students included in the School Composite Score is greater than or equal to 30.~~

~~1.2.1 If in such a school or program the number of students included in a School Composite Score is less than 30 the student scores shall be assigned to the Accountability School the student would have been assigned to if an Individual Education Program was not in place.~~

~~1.3 For students enrolled in alternative school programs pursuant to 14 Del. C., Chapter 16, or the Delaware Adolescent Program the Accountability School shall be the school that assigned them to the program. For the purposes of this chapter the time the students were enrolled in the alternative or transitional program shall be credited to the Accountability School.~~

~~2.0 Composite Score: A School Composite Score for each Accountability School shall be created utilizing the formula found in 14 Del. C., Section 154(b)(1).~~

~~2.1 The School Composite Score shall include the collective performance of all students in each Standards Cluster as defined in section 2.6 and 2.7 below on the assessments administered pursuant to 14 Del. C., Section 151 (b) and (c).~~

~~2.1.1 For students who take a portion of the assessment more than once within a measurement cycle, the best test score] except re-tests by 12<sup>th</sup> grade students shall be included in the School Composite Score.~~

~~2.1.2 For school accountability purposes a student not assessed either pursuant to 14 Del. C., Section 151 (b) and (c) or not assessed with alternate assessments approved by the Department of Education shall be assigned to Performance Level 0, and such score shall be assigned to the school that failed to assess the student.~~

~~2.1.3 Except for students who participate in out-of-~~

level testing, students who test with non-aggregable conditions as defined in the Department of Education's *Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency* shall have her/his performance level included in the School Composite Score.

2.1.4 For school accountability purposes a student who tests but does not meet attemptedness rules as defined in the Department of Education's Scoring Specifications, who participates in out-of-level testing or otherwise receives an invalid score shall be assigned to Performance Level 1.

2.1.5 A student participating in alternate assessments shall have her/his performance level included in the School Composite Score.

2.2 Schools with more than one tested grade shall receive a single School Composite Score determined by aggregating the performance levels of students who score at each performance level in each tested grade.

2.3 Baselines for Accountability Schools shall be determined using two years of their students' performance, beginning with the Accountability School's first two administrations of the Delaware Student Testing Program. New School Composite Scores shall be established each two years thereafter.

2.3.1 Prior to 2003 reading, writing and mathematics results shall be utilized to determine School Composite Scores.

2.3.2 In 2003 two School Composite Scores shall be calculated. The School Composite Score used to determine performance shall include reading, writing and mathematics results. The School Composite Score used as the school's new baseline shall include reading, writing, mathematics, science and social studies results.

2.3.3 After 2003 reading, writing, mathematics, science and social studies results shall be utilized to determine all School Composite Scores.

2.4 Schools shall be evaluated for performance by comparing their performance on the three measures defined in section 3.0 over a measurement cycle.

2.5 Student performance in a tested grade shall be apportioned in equal weights to each grade in a Standards Cluster, except that Kindergarten shall be weighted at 10%.

2.6 Prior to the inclusion of science and social studies results in the School Composite Score the weights assigned to each subject shall be 40% for reading, 40% for mathematics and 20% for writing.

2.6.1 Standards Clusters shall be defined as follows:

Standards Cluster	Spring Assessments, Calendar Year A
Grades K-3	Grade 3 reading, writing, mathematics

Grades 4-5	Grade 5 reading, writing, mathematics
Grades 6-8	Grade 8 reading, writing, mathematics
Grades 9-10	Grade 10 reading, writing, mathematics

2.7 When science and social studies results are included in the School Composite Score, the weights assigned to each subject shall be as follows:

2.7.1 For assessments in grades 3 through grade 6: 35% for reading, 35% for mathematics, 10% for writing, 10% for science and 10% for social studies.

2.7.2 For assessments in grades 8 through grade 11: 20% for reading, 20% for mathematics, 20% for writing, 20% for science and 20% for social studies.

2.7.3 Standards Clusters shall be defined as follows:

Standards Cluster	Spring Assessments, Calendar Year A	Fall Assessments, Calendar Year A
Grades K-3	Grade 3 reading, writing, mathematics	Grade 4 science, social studies
Grades 4-5	Grade 5 reading, writing, mathematics	Grade 6 science, social studies
Grades 6-8	Grade 8 reading, writing, mathematics, science, social studies	
Grades 9-10	Grade 10 reading, writing, mathematics	
Grades 9-11	Grade 11 science, social studies	

See 5 DE Reg. 1281 (12/1/01)

3.0 Performance Criteria: The Department of Education shall determine the performance status of a school by utilizing three measures of performance.

3.1 Absolute Performance: The Absolute Performance of the school's student body on the assessments administered pursuant to 14 Del. C., Section 151 (b) and (c) measured using the School Composite Score. Target School

Composite Scores shall be determined by the Department of Education with the consent of the State Board of Education.

3.2 Improvement Performance: The school's record in improving its School Composite Score over a measurement cycle by an amount determined by the Department of Education with the consent of the State Board of Education.

3.2.1 The expected improvement for a given school shall be the difference between the school's current composite score and a target School Composite Score that all schools are expected to achieve divided by the number of measurement cycles the school has to reach the target School Composite Score.

3.2.2 For schools that have already met the target School Composite Score, a higher target shall be established. Target School Composite Scores and time periods shall be determined by the Department of Education with the consent of the State Board of Education.

3.3 Distributional Performance: The school's record in improving the performance of low achieving students over a measurement cycle by an amount determined by the Department of Education with the consent of the State Board of Education.

3.3.1 The expected Distributional Performance for a given school shall be a specified decrease in the percentage of students performing below the standard (those in levels 0, 1, and 2) in tested content areas while the percentage of students in Level 0 and the percentage of students in Level 1 in tested content areas do not increase by a targeted amount.

3.3.1.1 All regulations utilized to calculate school composite scores pursuant to 2.0 shall also apply to calculate distributional performance.

3.3.2 An Accountability School that has no change in the percentage of students performing below the standard or reduces that percentage by less than the target shall be assessed by whether the Distributional Composite Score, calculated by including only those students who have not met the standard, increases by a targeted amount. Distributional Targets shall be determined by the Department of Education with the consent of the State Board of Education.

See 5 DE Reg. 1281 (12/1/01)

4.0 Performance Classifications: Schools shall be rated by the Department of Education based on their collective performance on the three specific measures of performance described in section 3.0. The performance classification of each school shall be reported in School Profiles.

4.1 Superior Performance: A school's performance is deemed excellent. Schools in this category shall have met or exceeded performance targets as determined by the Department of Education with the consent of the State Board of Education.

4.2 Commendable Performance: A school's performance is deemed acceptable. Schools in this category

shall have met sufficient performance targets as determined by the Department of Education with the consent of the State Board of Education.

4.3 Under School Improvement: A school's performance is deemed as needing improvement. Schools in this category have not met sufficient performance targets as determined by the Department of Education with the consent of the State Board of Education. Schools initially classified in this category shall be evaluated using a School Review Process pursuant to section 5.0 below. Following a final classification of a school as Under School Improvement the school shall be required to undertake improvement and accountability activities as defined in 14 Del.C., Section 154(d)(2).

4.4 Unsatisfactory Performance: A school's performance is deemed as unacceptable. Schools Under School Improvement who after two years have not met sufficient performance targets as determined by the Department of Education with the consent of the State Board of Education shall be classified as Unsatisfactory. Schools in this category shall be required to undertake improvement and accountability activities as defined in 14 Del.C., Section 154(d)(3).

4.5 Schools required to develop a school improvement plan pursuant to 14 Del.C., Section 154(d)(2) and (3) shall include specific strategies to improve the performance of students in each low performing sub-population as defined by the Department of Education.

See 5 DE Reg. 1281 (12/1/01)

5.0 School Review Process: Schools classified as Under School Improvement shall be evaluated by a School Review Team.

5.1 The purpose of the evaluation is to determine whether additional evidence of school performance demonstrates that a school should be reclassified as Commendable.

5.2 For each school subject to review, the School Review Team shall consist of four members who shall include two representatives of the Department of Education and two educators from Delaware public schools, and may include educators who have retired within the previous five years. Each team shall be chaired by a representative of the Department of Education. All School Review Team members shall be appointed by the Secretary of Education.

5.3 Schools subject to review shall provide the Department of Education with evidence of school performance in a form acceptable to the Department. Such evidence, along with school performance data available to the Department of Education, shall provide the basis for the evaluation of the school's performance.

5.4 Criteria used to evaluate other evidence of school performance shall include at a minimum:

5.4.1 The use and analysis of student achievement

data and other data to determine areas of need.

5.4.2 Curriculum and instructional decisions based on student needs identified through data analysis

5.4.3 Professional development aligned to curriculum, instruction and identified student needs

5.4.4 Community involvement in the school's decision making process, including evaluation and planning

5.4.5 Curriculum aligned to the state content standards

5.4.6 Research-based instruction aligned to curriculum and teaching strategies based on student needs

5.4.7 Resources aligned with student needs and goals and objectives identified in the School Improvement Plan

5.4.8 The school develops and implements strategies to promote a positive climate supportive of student achievement.

5.5 The School Review Team shall evaluate evidence of school performance with respect to the criteria in section 5.4 above using a scoring process approved by the Department of Education. A target score shall determine whether a school should receive a site visit or shall remain classified as Under School Improvement. Target scores for site visits shall be determined by the Department of Education with the consent of the State Board of Education. No school with a score below the target shall receive a site visit or be reclassified.

5.5.1 Schools that are designated to receive a site visit shall have the option of declining such a visit. No school shall receive a recommendation to be reclassified to Commendable without a site visit by a School Review Team. The district in which the school is located shall have five working days to notify the Secretary of Education in writing if they do not wish to receive a site visit. Charter schools shall have five working days to notify the Secretary of Education in writing if they do not wish to receive a site visit. All schools that decline a site visit shall remain classified as Under School Improvement.

5.6 Following any site visits the School Review Team shall recommend to the Secretary of Education whether a school shall remain Under School Improvement or whether additional evidence exists to reclassify the school to Commendable Performance. Target scores used as the basis for such recommendations shall be determined by the Department of Education with the consent of the State Board of Education.

5.6.1 Upon such a recommendation the Secretary of Education may reclassify a school to Commendable Performance subject to the consent of the State Board of Education.

See 4 DE Reg. 1661 (4/1/01)

See 5 DE Reg. 1281 (12/1/01)

6.0 Appeals Process: A school may appeal its performance

classification as follows.

6.1 The school must file a written notice of appeal with the Secretary no later than 30 days after receiving written notification of its performance classification. The notice of appeal shall state with specificity the grounds for the appeal, and shall be signed by the principal of the school and except in the case of a charter school, the superintendent of the district that has authority over the school.

6.2 Upon receipt of a satisfactory form of notice of appeal, the Secretary will decide whether to hear the appeal or assign it to a hearing officer.

6.3 The Secretary or hearing officer, as the case may be, will establish a date upon which the appeal will be heard. The school shall be given not less than 20 days notice of the hearing date. A written position statement, legal brief or memorandum in support of its appeal shall be filed by the school with the Secretary or hearing officer no later than 10 days prior to the hearing date. Any written statement must clearly identify the issues raised in the appeal. Briefs or legal memoranda shall be submitted with the written statement if the appeal is based upon a legal issue or interpretation.

6.4 A school challenging its classification must prove by clear and convincing evidence that the classification assigned to it by the department was contrary to law or regulations, was not supported by substantial evidence, or was arbitrary or capricious, or should be changed because of other extraordinary mitigating circumstances beyond the school's control.

6.5 If the appeal has been assigned to a hearing officer, the hearing officer will issue a recommended decision to the Secretary in the form of a Proposed Order. The Secretary will not conduct any further hearings on the matter, but with the consent of the State Board of Education, will issue a final decision within 30 working days thereafter.

See 5 DE Reg. 1281 (12/1/01)

### **103 Accountability for Schools, Districts and the State.**

#### 1.0 Accountability

1.1 Accountability: All public schools, including charter schools, reorganized and vocational-technical school districts and the state shall be subject to the calculation and reporting of Adequate Yearly Progress (AYP) as prescribed by the federal Elementary and Secondary Education Act (ESEA), 20 U.S. C.A. §6301 et seq. Additionally, public schools, including charter schools, reorganized and vocational-technical school districts shall be subject to the applicable rewards, sanctions and other accountability activities as prescribed in this regulation.

#### 2.0 Adequate Yearly Progress (AYP)

2.1 Adequate Yearly Progress shall be determined by the Department of Education for all public schools,

including charter schools, reorganized and vocational-technical school districts and the State on an annual basis. In order for a public school, including a charter school, reorganized or vocational-technical school district or the State to meet AYP, the aggregate student population and each subgroup of students as identified in ESEA, must meet or exceed the target for percent proficient in the state assessments of reading/language arts and mathematics; 95% of the students as an aggregate and within each subgroup must participate in the state assessments of reading/language arts and mathematics, except for those students who meet the exemption criteria as specified in 14 DE Admin. Code 101 §9.0; and the respective entity must show progress towards the state target for other academic indicator(s). In calculating the percent proficient each year, the state will average the most recent two years of percent proficient (including the current year's percent proficient) and compare the results to the current year percent proficient. The highest percent proficient score will be used to determine the school, district or State AYP status.

2.2 Full academic year for accountability:

2.2.1 For school accountability students enrolled continuously in the school from September 30 through May 31 of a school year and those students identified in 3.1 and 3.2, shall be considered enrolled for a full academic year.

2.2.2 For district accountability students enrolled continuously in the district (but not necessarily the same school), from September 30 through May 31 of a school year, and those students identified in 3.1 and 3.2, shall be considered enrolled for a full academic year.

2.2.3 For state accountability students enrolled continuously in the state (but not necessarily the same school or district) from September 30 through May 31 of a school year shall be considered enrolled for a full academic year.

2.3 Proficient: For accountability purposes students who score at Performance Level 3 (Meets the Standard) or above and who have met the requirements of a Full Academic Year as defined in 2.2 shall be deemed proficient. Students who score at Performance Level 2, Level 1 or Level 0 who have met the requirements of a Full Academic Year as defined in 2.2 shall not meet the definition of proficient.

2.4 Participation Rate: For accountability purposes in school years 2002-2003 through 2004-2005, the participation rate for each subgroup, all public schools, including charter schools, districts, and the State, shall be the number of students who participate in the DSTP in grades 3, 5, 8 and 10 divided by the number of students enrolled in these tested grades during the testing period. Beginning with the 2005-2006 school year the participation rate shall include the number of students who participate in the DSTP in grades 3 through 8 inclusive and grade 10. Students exempted by 14 DE Admin. Code 101, Section 9.0 are not included in the participation rate calculation. For schools

with no accountability tested grades (K-2), the participation rate shall be determined by the number of students who participated in the work sampling or grade 2 DSTP assessments divided by the number of students enrolled during the testing period.

2.5 Safe Harbor: For accountability purposes if a school, district or the State fails to meet the target for percent proficient for a given subgroup or for the entity in aggregate, safe harbor provisions shall be examined for that group. When the percentage of students in a subgroup not meeting the definition of proficient decreases by at least 10% when compared to the previous year's data, the participation rate for the population is at least 95%, and the subgroup maintains or shows progress on the other academic indicator the subgroup will have met AYP.

2.6 Other academic indicator:

2.6.1 High School: For AYP purposes, the other academic indicator shall be graduation rate as defined as the number of students in one cohort who started in the school/district/state in 9<sup>th</sup> grade and graduated four years later divided by the same number plus those that have dropped out during the same four year period.

2.6.1.1 The statewide target for the high school other academic indicator shall be a graduation rate of 90% by the school year 2013-2014. Beginning with the school year 2002-2003, if the graduation rate is used for safe harbor purposes, the high school shall be expected to maintain its graduation rate or show positive progress when compared to the previous year.

2.6.1.2 A school that does not maintain its graduation rate or show positive progress from the previous year shall be considered as not meeting AYP for that year.

2.6.2 Elementary and Middle School: For AYP purposes, the Other Academic Indicator for elementary and middle schools shall be the percent of students proficient on the grade 4, 6, and 8 DSTP science and social studies assessments combined. The science and social studies content standards are arranged by grade clusters. Students shall be tracked back to the school/district that provided the instructional services for the grade cluster.

2.6.2.1 The statewide target for the elementary and middle school other academic indicator shall be a percent proficient of 85% by the school year 2013-2014. Beginning with the school year 2002-2003, when compared to the previous year, the school or subgroup, if used for safe harbor purposes, shall be expected to maintain its percent proficient or show positive progress when compared to the previous year towards the state target of 85%.

2.6.2.2 An elementary or middle school that does not maintain its percent proficient for the other academic indicator or show positive progress from the previous year shall be considered as not meeting AYP for that year.

2.6.3 For state and district accountability purposes, the state or a district shall be expected to maintain both the graduation rate and percent proficient or show positive progress when compared to the previous year towards the state target of 90% for the high school other academic indicator and 85% for the elementary and middle school other academic indicator.

2.7 Annual Objective: The annual objectives for reading/language arts and mathematics shall be determined by the Department of Education and published annually. The annual objectives shall be the same for all schools, districts and subgroups of students.

2.8 Intermediate Target: There shall be seven intermediate targets with the first intermediate target occurring in the 2004-2005 school year. The second intermediate target shall occur in 2006-2007; the third in 2008-2009; the fourth in 2009-2010; the fifth in 2010-2011, the sixth in 2011-2012 and the seventh in 2012-2013. By the end of the school year 2013-2014, all students in all subgroups shall be proficient in reading/language arts and mathematics. The intermediate targets shall be calculated using the procedures as prescribed by the federal Elementary and Secondary Education Act (ESEA), 20 U.S. C.A. §6301 et seq.

2.9 Starting Point: A single statewide starting point shall be calculated for reading/language arts and a single statewide starting point shall be calculated for mathematics using the procedures as prescribed by the federal Elementary and Secondary Education Act (ESEA), 20 U.S. C.A. §6301 et seq.

2.10 Subgroup categories: For AYP purposes, subgroup categories shall be delineated as follows: 1) Children with Disabilities (as per IDEA); 2) Economically Disadvantaged Students, as determined by eligibility for free and reduced lunch program; 3) Students with Limited English Proficiency, as determined by the language proficiency assessment; and 4) Race/ethnicity, to be further divided into African American/black, American Indian/Alaska native, Asian/Pacific Islander, Hispanic, and White. Such subgroup categories shall include all students eligible for the AYP calculation as further defined throughout this Chapter. The "All" categories shall include all students in the entity for which AYP is calculated and who meet all other eligibility criteria for the AYP calculation.

2.11 Adequate Yearly Progress (AYP) Calculations

2.11.1 For each public school, including charter schools, reorganized and vocational-technical school district, and the State, AYP shall be calculated annually.

2.11.2 School AYP: In order to meet AYP, the aggregate student population of a school and each subgroup of students within a school, shall meet or exceed the annual target for percent proficient as defined in 2.3; the participation rate shall be 95% or greater; and the school in

the aggregate shall maintain or show progress on the other academic indicator. If there are 15 or more students in the aggregate or in any subgroup the percent proficient shall be reported. If there are 40 or more students in the aggregate or in any subgroup the percent proficient shall be reported and used to determine AYP status and accountability ratings. The Safe Harbor provision as defined in 2.5 shall be used for a school that does not meet AYP in the aggregate or in any subgroup within the school.

2.11.3 District AYP: In order to meet AYP, the aggregate student population of a district and each subgroup of students within a district, shall meet or exceed the annual target for percent proficient as defined in 2.3; the participation rate shall be 95% or greater; and the district in the aggregate shall maintain or show progress on both of the other academic indicators. If there are 15 or more students in the aggregate or in any subgroup the percent proficient shall be reported. If there are 40 or more students in the aggregate or in any subgroup the percent proficient shall be reported and used to determine AYP status and accountability ratings. The Safe Harbor provision as defined in 2.5 shall be used for a district that does not meet AYP in the aggregate or in any subgroup within the school.

2.11.4 State AYP: In order to meet AYP, the aggregate student population in the State and each subgroup of students within the State, shall meet or exceed the annual target for percent proficient as defined in 2.3; the participation rate shall be 95% or greater; and the State in the aggregate shall maintain or show progress on both of the other academic indicators. If there are 15 or more students in the aggregate or in any subgroup the percent proficient shall be reported. If there are 40 or more students in the aggregate or in any subgroup the percent proficient shall be reported and used to determine AYP status and accountability ratings. The Safe Harbor provision as defined in 2.5 shall be used for state accountability if the State does not meet AYP in the aggregate or in any subgroup within the State.

2.11.5 Under Improvement: A school or district shall be deemed Under Improvement if AYP is not met two consecutive years in the same content area of reading/language arts or mathematics, or if a school or district in the aggregate does not maintain or show progress on the Other Academic Indicator(s).

**See 5 DE Reg. 1281 (12/1/01)**

3.0 Accountability School and/or District: For AYP purposes, the school/district to which a student's performance is assigned for a full academic year shall be the Accountability School/District. No student shall have his/her performance assigned to more than one Accountability School/District in a given school year.

3.1 For a student enrolled in an intra-district intensive learning center or intra-district special school or program

operating within one or more existing school facilities, the school/district of residence shall be considered the Accountability School/District for the student. For a student enrolled in inter-district special schools or programs that have an agreement to serve students from multiple school districts, the school/district of residence shall be considered the Accountability School/District.

3.2 For a student enrolled in an alternative school program pursuant to 14 Del. C., Chapter 16, or the Delaware Adolescent Program, the Accountability School/District shall be the school/district that assigned such student to the program or the school/district of residence. For the purposes of this chapter the time the students were enrolled in the alternative or transitional program shall be credited to the Accountability School/District.

3.3 For a student who participates in the choice program pursuant to 14 Del.Code, Chapter 4 the Accountability School/District shall be the school/district to which the student has choiced.

**See 5 DE Reg. 1281 (12/1/01)**

#### 4.0 Assessment Criteria.

4.1 For a student who takes a portion of the assessment more than once during the school year, the first score shall be included in the AYP calculation.

4.2 A student who tests with non-aggregable conditions as defined in the Department of Education's *Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency* shall have his/her earned performance level included in the calculation of AYP.

4.3 For accountability purposes a student who tests but does not meet attemptedness rules as defined in the Department of Education's scoring specifications or otherwise receives an invalid score shall be deemed as not meeting proficiency.

4.4 A student participating in alternate assessments shall have her/his performance level included in the AYP calculation.

4.5 Schools with more than one tested grade shall receive a single accountability rating.

4.6 Student performance in a tested grade shall be apportioned in equal weights to each grade in a standards cluster, except that Kindergarten shall be weighted at 10% and grade 10 shall be weighted at 100%. Beginning with the school year 2005-2006 students in grades 4,5,6,7,8, and 10 will count 100%. Students in grade 3 will continue to be weighted to each grade in the K-3 standards cluster.

4.7 For AYP purposes the reading/language arts percent proficient shall be based on a combination of the reading and writing DSTP assessments. The reading percent proficient scores shall be weighted to count 90% and the writing percent proficient scores shall be weighted to count 10%.

4.8 For AYP purposes, the mathematics percent

proficient shall be based on 100% of the DSTP mathematics assessment.

**See 5 DE Reg. 1281 (12/1/01)**

5.0 Performance Classifications: Schools and districts shall receive one of five levels of performance classification annually.

5.1 Superior: A school or district's performance is deemed excellent. Schools or districts in this category shall have met AYP while the school or district is not Under Improvement and additional rigorous state criteria are met. The additional state criteria shall be developed by the Department of Education with the consent of the State Board of Education.

5.2 Commendable: A school or district's performance is deemed above average. Schools or districts in this category shall have met AYP while the school or district is not Under Improvement.

5.3 Academic Review: A school or district's performance is deemed acceptable. Schools or districts in this category shall not have met APY for one year and are not Under Improvement.

5.4 Academic Progress: A school or district's performance is deemed as needing improvement. Schools or districts in this category shall have met AYP for one year while the school or district is Under Improvement. If a school or district was classified as Academic Watch the prior year, all accountability sanctions from that prior year remain in effect.

5.5 Academic Watch: A school or district's performance is deemed as unsatisfactory. Schools or districts in this category shall not have met AYP for two or more years and shall be Under Improvement.

**See 4 DE Reg. 1661 (4/1/01)**

**See 5 DE Reg. 1281 (12/1/01)**

6.0 Schools and Districts that are classified as Under Improvement.

6.1 Accountability sanctions for schools that are classified as Under Improvement:

6.1.1 Under Improvement -Year 1 - A school shall review and modify its current School Improvement Plan outlining additional specific school improvement activities to be implemented beginning in this same year. A school designated as Title I shall implement federal ESEA Choice. The school shall follow the district Federal ESEA Choice Program.

6.1.2 Under Improvement - Year 2 - A school shall continue to review and modify the School Improvement Plan as needed. A school designated as Title I shall continue to offer federal ESEA Choice. In addition a Title I school shall provide supplemental services according to the federal ESEA requirements. Schools not designated as Title I shall give priority, as appropriate, within their extra

time services to students in those subgroups that have not met the target for percent proficient in the reading/language arts and/or mathematics assessments.

6.1.3 Under Improvement - Year 3 - A school shall continue with the activities as per 6.1.2. In addition, all schools shall be subject to corrective action as outlined by federal ESEA requirements.

6.1.4 Under Improvement - Year 4 - A school shall continue with the activities as per 6.1.3. In addition, shall develop a plan for restructuring as outlined by federal ESEA requirements.

6.1.5 Under Improvement - A school shall continue with the activities as per 6.1.2. In addition, the school shall implement the restructuring plan as outlined by federal ESEA requirements.

6.2 Accountability sanctions for districts that are classified as Under Improvement:

6.2.1 Under Improvement - Year 1 - A district shall develop and implement a District Improvement Plan.

6.2.2 Under Improvement - Year 2 - A district shall evaluate and modify the District Improvement Plan and shall incorporate such plan into the Consolidated Application.

6.2.3 Under Improvement - Year 3 - A district shall continue with the activities outlined in 6.2.2. In addition the district shall develop a corrective action plan as outlined by Federal ESEA requirements.

6.2.4 Under Improvement - Year 4 - A district shall continue with the activities as outlined in 6.2.3. In addition the district and the Department of Education shall evaluate the corrective action plan and make appropriate modifications as needed.

**See 5 DE Reg. 1281 (12/1/01)**

7.0 Review Process: A school or district deemed Under Improvement may review school or district level data, including academic assessment data upon which the proposed classification is based. The school or district shall present statistical evidence or other substantive reasons why the classification should be changed before the final classification will be determined.

7.1 The school or district must file a written notice of review with the Secretary no later than 15 calendar days after receiving preliminary notification of its designation of Under Improvement. The request for review shall state with specificity the grounds for the review, and shall be signed by the principal or lead authority of the school, or the signature of the Superintendent of the district. This request for review shall include all supporting evidence and documentation and shall be clear and concise.

7.2 Upon receipt of a written notice of review, the Department of Education shall conduct a review of the evidence or other substantive reasons presented by the school or district.

7.3 The Department of Education shall make a final determination within 30 calendar days from the written notice of review on the Under Improvement status of the school or district based on the evidence or other substantive reasons presented by the school or district.

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**Education Impact Analysis  
Pursuant To 14 DEL. C. Section 122(d)**

**104 Education Profiles for the Schools, Districts and the State**

**A. Type of Regulatory Action Required**

New Regulation

**B. Synopsis of Subject Matter of the Regulation**

The Secretary of Education seeks the consent of the State Board of Education to adopt a new regulation 104 Education Profiles for Schools, Districts and the State. The regulation is required due to changes in state and federal statutes concerning school, district and State accountability for student performance. The regulation continues the mandates for the development of profiles for schools districts and the State and includes the information that must appear in each type of profile. Other additional information can be added. The regulation also defines when and how the profiles will be published.

**C. Impact Criteria**

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation defines the process for communicating the student achievement results to the public.

2. Will the new regulation help ensure that all students receive an equitable education? The new regulation defines the process for communicating the student achievement results to the public and all results are disaggregated by race, gender and income level.

3. Will the new regulation help to ensure that all students' health and safety are adequately protected? The new regulation defines the process for communicating the student achievement results to the public but does not specifically address health and safety issues.

4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation defines the process for communicating the student achievement results to the public but does not specifically address issues of students' legal rights.

5. Will the new regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The new regulation defines the

specific elements that must be in the profiles on student achievement.

6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The new regulation continues an existing requirement to produce school profiles but it does include some additional required elements.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The federal and state statutes as reflected in the new regulation are more specific as to the content of the profiles.

8. Will the new regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The new regulation will be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the amended regulation? The state statute requires the Department of Education to promulgate this regulation.

10. What is the cost to the State and to the local school boards of compliance with the new regulation? The state pays for the cost of developing the profiles.

#### **104 Education Profiles for Schools, Districts, and the State**

1.0 Education Profiles: All public schools, including charter schools, reorganized or vocational-technical school districts and the State shall issue Delaware Public Education Profiles on the state of Delaware's public school system as required by 14 Del.C. §124A. The profiles shall be referred to as school, district, and state Profiles respectively. Each profile shall contain, but need not be limited to, the following information, aggregated at the appropriate level (school, district or state), unless otherwise noted:

1.1 Information on student achievement at each performance level on the state reading, writing, mathematics, science, and social studies academic assessments. Such information shall be disaggregated by race, ethnicity, gender, disability status, migrant status, English proficiency, and status as economically disadvantaged except that such disaggregation shall not be required in a case in which the number of students in a category is less than fifteen (15).

1.2 The most recent 2-year trend in student

achievement in each of the five content areas, and for each grade level the assessments are administered;

1.3 The percentage of students not tested in reading/language arts and mathematics disaggregated by the student subgroups as defined in 1.9, except that such disaggregation shall not be required in a case in which the number of students in a category is less than fifteen (15).

1.4 Information that provides a comparison between the actual achievement levels of each student subgroup meeting proficiency and those that have not met proficiency, as defined in 14 DE Admin. Code 103, 1.4 and the state's annual measurable objectives for each such group of students in the reading/language arts and mathematics academic assessments;

1.5 Aggregate information of the percent proficient on the combined scores of the science and social studies academic assessments for elementary and middle schools, used as the other indicator to determine Annual Yearly Progress (AYP) of students in achieving the state academic standards disaggregated by student subgroups. Such disaggregation shall not be required in a case in which the number of students is less than fifteen (15).

1.6 For secondary schools only, graduation rate defined as the number of students enrolled in the school in the ninth grade and graduation with a diploma four years later disaggregated by student subgroups. Such disaggregation shall not be required in a case in which the number of students is less than fifteen (15).

1.7 Information on the performance of the school, district, or state regarding making adequate yearly progress, including the number and names of each school identified as Under School Improvement.

1.8 Information regarding the professional qualifications of teachers in the school, district and state, the percentage of such teachers teaching with emergency or provisional credentials, and the percentage of classes in the state not taught by highly qualified teachers, in the aggregate and disaggregated by high-poverty compared to low-poverty schools which means schools in the top quartile of poverty and the bottom quartile of poverty in the State;

1.9 Information pertaining to the AYP status and accountability ratings;

1.10 Information pertaining to school safety and discipline and student attendance;

1.11 Information pertaining to school district administrator-student ratios, school teacher-student ratios and other staffing ratios;

1.12 Information pertaining to pupil and staff demographics;

1.13 Information pertaining to school district revenues, expenditures, tax rates and wealth (district profile only);

1.14 Information pertaining to school curricular offerings (school profile only);

1.15 Information pertaining to parent and community involvement in the school and school district;

1.16 Examples of exemplary programs, successful teaching, school climate or disciplinary strategies and other developments (only in school profile); and

1.17 Other items from time to time that may be required by the federal Elementary and Secondary Education Act.

2.0 Publishing of Profiles: The profiles will be published, subject to an annual appropriation in the annual state budget act, at the expense of the state. School and districts-specific data shall be submitted, in the format requested, to the Department in the time frame delineated in the Data Acquisition Calendar. The State shall have the profiles available on the Department of Education website no later than August 15, 2003 and on or before August 1 of each subsequent year.

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**Education Impact Analysis Pursuant To 14 DEL. C.  
Section 122(d)**

**605 Student Rights and Responsibilities**

**A. Type of Regulatory Action Required**

Amendment to Existing Regulation

**B. Synopsis of Subject Matter of the Regulation**

The Secretary of Education intends to amend regulation 605 Student Rights and Responsibilities. The amended regulation now includes charter schools and corrections have been made to the title of the Department of Education Guidelines and to the titles of the regulations that should be used in developing the district and charter school policies. Other elements of the regulation remain the same.

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses students' rights and responsibilities which can have an impact on school climate and student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will continue to insure that all students have the same information about their rights and responsibilities.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation will continue to assure that students' health and safety are adequately protected as found in the information on their rights and responsibilities.

4. Will the amended regulation help to ensure that all

students' legal rights are respected? The amended regulation will help to ensure that all students' legal rights are protected as found in the information on their rights and responsibilities.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation continues to give the districts and charter schools the authority and flexibility to develop their own rights and responsibilities policies in compliance with federal and state laws.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any new reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated continues to be in the same entity.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation continues to be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the amended regulation? There is no less burdensome method for addressing the purpose of the amended regulation.

10. What is the cost to the State and to the local school boards of compliance with the amended regulation? The amended regulation does not change any existing cost factors.

**605 Student Rights and Responsibilities**

~~1.0 All local school districts shall have their own policies on student rights and responsibilities and shall distribute and explain these policies to every student in the school district at the beginning of every school year. The local district's policies shall be based on the Technical Assistance Manual for the Development of District Policies on Student Rights and Responsibilities and on the Department of Education regulations, Policy for the School Districts on the Possession, Use or Distribution of Drugs and Alcohol, and School District Compliance with the Gun-Free Schools Act.~~

1.0 All local school districts and charter schools shall have their own policies on student rights and responsibilities and shall distribute and explain these policies to every student at the beginning of every school year. These policies shall be based on the Department of Education document *Guidelines for the Development of District Policies on Student Rights and Responsibilities*, as may be from time to time revised by the Department of Education, and on Department of Education regulations, 876 Possession, Use or Distribution of Drugs and Alcohol, and 878 Compliance with the Gun-Free Schools Act.

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**Education Impact Analysis Pursuant To 14 DEL. C.  
Section 122(d)**

**608 Unsafe School Choice Option for Students in  
Persistently Dangerous Schools and for Students Who  
Have Been Victims of a Violent Felony**

**A. Type of Regulatory Action Required**

New Regulation

**B. Synopsis of Subject Matter of the Regulation**

The Secretary of Education intends to adopt a new regulation 608 Unsafe Public School Choice Option for Students in Persistently Dangerous Schools and for Students who Have Been Victims of a Violent Felony. The Unsafe School Choice Option (USCO) (section 9532 of the Elementary and Secondary Education Act (SEA) of 1965, as amended by the No Child Left Behind Act of 2001) requires that a State Education Agency establish a State USCO policy in order to receive funding under ESEA. The regulation identifies the conditions that must exist in order to identify persistently dangerous schools, defines a violent crime and other relevant terms and identifies the responsibilities of the local school districts and charter schools in implementing the federal statute.

**C. Impact Criteria**

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation addresses school climate issues which can have an impact on student achievement.

2. Will the new regulation help ensure that all students receive an equitable education? The new regulation addresses school climate issues not equitable education issues.

3. Will the new regulation help to ensure that all students' health and safety are adequately protected? The new regulation addresses school climate issues that include strong elements of student safety.

4. Will the new regulation help to ensure that all

students' legal rights are respected? The new regulation addresses school climate issues that include the issue of students' legal rights.

5. Will the new regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The new regulation will preserve the necessary authority and flexibility of decision making at the local board and school level.

6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The new regulation will add some additional reporting and administrative requirements at the local board and school levels in order to comply with the federal statute.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated will remain in the same entity.

8. Will the new regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The new regulation will be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the new regulation? Federal legislation requires that the State adopt this regulation in order to receive federal funds.

10. What is the cost to the State and to the local school boards of compliance with the new regulation? There are federal funds available to cover some of the additional costs to the State and to the local school boards for compliance with the new regulation.

**608 Unsafe School Choice Option for Students in  
Persistently Dangerous Schools and for Students who  
Have Been Victims of a Violent Felony**

The Elementary and Secondary Education Act (ESEA) of 1965, as amended by the No Child Left Behind Act of 2001), requires that a State Education Agency establish a State Unsafe School Choice Option policy in order to receive funding under ESEA.

**1.0 Definitions:**

In this regulation, the following terms shall have the meanings indicated below:

"Crime" shall have the same meaning as provided in 14

**Del.C. §4112.**

**"Enrolled students"** unless the context indicates otherwise, means all students included in the Delaware Student Information System (DELSIS) report for the year of the data collection.

**"Firearm"** means handgun, rifle, shotgun, or other type of firearm as that term is defined in the federal Gun Free Schools Zone Act at 18 U.S.C.A. §921.

**"Fiscal year"** means the period of July 1 through June 30.

**"Gun free school's violation"** means the prohibited bringing to school, or possession while in school of a firearm by a student.

**"Persistently Dangerous School"** means a school that has five or more unsafe incidents for every one hundred students enrolled for three consecutive fiscal years.

**"Safe school"** means a school in the same school district that is not currently identified by the Department of Education as a persistently dangerous school.

**"School"** means any public school including charter schools.

**"School property"** shall have the same meaning as provided in 14 **Del.C.** §4112 (a)(9).

**"Suspension"** means, for the purpose of this regulation, the external removal of a student from the general school population.

**"Terroristic threatening"** shall have the same meaning as provided in 11 **Del.C.** §621.

**"Unsafe incidents"** means any of the following:

The school suspended or expelled a student for a gun-free schools violation; or

The school suspended or expelled a student for a crime committed on school property which is required to be reported under 14 **Del.C.** §4112; or

The school reported a crime committed by a non-student on school property that is required to be reported under 14 **Del.C.** §4112; or

The school suspended or expelled a student for terroristic threatening as that term is defined in 11 **Del.C.** §621.

**"Violent felony"** shall have the same meaning as provided in 11 **Del.C.** §4201(c). (A list of these crimes can be found in the *Delaware Guidelines for the Development of the Unsafe School Choice Option.*)

2.0 Beginning in July 2003, the Department of Education shall identify each persistently dangerous school using the data reported to it pursuant to the provisions of 14 **Del.C.** §4112 and 14 DE Admin. Code 601.

2.1 Notwithstanding any provision herein to the contrary, any year that a school fails to comply with the reporting mandates, as set forth in 2.0 above, to the Delaware Department of Education or to the appropriate police agency as set forth above, the Department of

Education will consider the school as if it otherwise met the criteria to be classified as a persistently dangerous school for that year until such time as it may be determined, in the sole discretion of the Department, that the school has met such reporting requirements.

2.2 A school identified as persistently dangerous will retain that designation for the entire fiscal year.

3.0 A student attending a persistently dangerous school shall be allowed to choose to a safe school in the same school district, including a charter school; to the extent possible, the student should be permitted to transfer to a school that is making adequate yearly progress and has not been identified as being in school improvement, corrective action or restructuring.

3.1 Each public school district having one or more persistently dangerous schools and any charter school identified as a persistently dangerous school shall develop a plan and time line that describes the process for notifying parents of the school's status and for relocating any student who exercises the right to choice to a safe school. The plan shall also describe the corrective actions that will be implemented. The plan shall be forwarded to the Department of Education no later than September 15<sup>th</sup> of the year that the school is identified.

4.0 A student who is the victim of a violent felony while in or on the grounds of a school in which the student is enrolled shall be allowed to choose to a safe school in the same school district, including a charter school; to the extent possible, the student should be permitted to transfer to a school that is making adequate yearly progress and has not been identified as being in school improvement, corrective action or restructuring.

4.1 All school districts and charter schools shall establish a plan that describes their policies and procedures for providing school choice options to a student who is the victim of a violent felony, including the process for notifying parents. These plans shall be forwarded to the Department of Education by September 15, 2003.

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**Education Impact Analysis Pursuant To 14 Del.C.  
Section 122(d)**

**811 School Health Record Keeping Requirements**  
**815 Physical Examinations and Screening**  
**817 Administration of Medications and Treatments**

**A. Type of Regulatory Action Required**  
New Regulation

**B. Synopsis of Subject Matter of the Regulation**

The Secretary of Education intends to repeal the following twelve (12) regulations:

- 801 Delaware Emergency Treatment Card
- 802 Delaware School Health Record
- 803 Daily Log
- 806 Physical Examinations
- 807 Vision Screening
- 808 Hearing Screening
- 809 Orthopedic Screening
- 810 Accident Reporting
- 826 Administration of Prescription Medications
- 827 Administration of Non-Prescription Medications
- 828 Assistance with Medications on Field Trips
- 829 The School Nurse and the Child with Special Health Needs

and to adopt the following three (3) new revised regulations:

- 811 School Health Record Keeping Requirements
- 815 Physical Examinations and Screening
- 817 Administration of Medications and Treatments

In the new revised regulations the titles and numbers are new, the terms "Caregiver and students 18 years of age and older" have been added when the parent/guardian reference is used and in addition, much of the wording has been edited for clarity.

In regulation 811 School Health Record Keeping Requirements, the use of the term "Daily Log" has been discontinued, in an effort to move toward a system of completely computerized individual health records rather than a log where all students are recorded on the same record sheet.

In regulation 815 Physical Examinations and Screening, a statement was added to require that students have their physical examination within two years of entry into the school system. Orthopedic Screening has been changed to "screening for posture and gate" too more accurately represent what is actually done. Current screening is not a complete orthopedic screening and the use of the term Orthopedic is misleading for parents. The revisions also change the grades for the vision and hearing screening from grades 3, 5, 8 and 10 to grades 2, 4, 7 and grades 9 or 10 beginning with school year 2004-2005 and moves the date for completing this process from December 15<sup>th</sup> to January 15<sup>th</sup> of the school year. The grade change will help to identify vision or hearing problems a year before the state assessment is administered to allow time for appropriate follow up. The change to January 15<sup>th</sup> allows for additional time to complete the process.

In regulation 817 Administration of Medications and Treatments, the concept of the administration of treatments

has been added to the administration of medications. In addition the administration of treatments includes a reference to the specialized treatments required for some students. Section 4.0 has been added to assure that the Individual Education Program (IEP) Team will include the school nurse when a student requires significant medical and /or nursing interventions. Regulation 828 Administration of Medications on Field Trips has been eliminated as a separate regulation and is included in the new revised regulation 817 as it is part of the whole concept of the administration of medications during school hours.

**C. Impact Criteria**

1. Will the new revised regulations help improve student achievement as measured against state achievement standards? The new revised regulations address student health needs which have implications for student achievement.

2. Will the new revised regulations help ensure that all students receive an equitable education? The new revised regulations address school health issues and seek to treat all students equitably.

3. Will the new revised regulations help to ensure that all students' health and safety are adequately protected? The new revised regulations address the health and safety of students.

4. Will the new revised regulations help to ensure that all students' legal rights are respected? The new revised regulations address school health issues and when students' legal rights are involved their rights are respected.

5. Will the new revised regulations preserve the necessary authority and flexibility of decision making at the local board and school level? The new revised regulations will preserve the necessary authority and flexibility of decision making at the local board and school level.

6. Will the new revised regulations place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The new revised regulations will not place any unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will the decision making authority and accountability for addressing the subjects to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subjects to be regulated will remain in the same entity.

8. Will the new revised regulations be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The new revised regulations will be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational

policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of these regulations? There is not a less burdensome method for addressing the purpose of these regulations.

10. What is the cost to the state and to the local school boards of compliance with these regulations? There is no additional cost to the state and to the local school boards for compliance with these regulations?

### **801 Delaware Emergency Treatment Card**

1.0 A Delaware Emergency Treatment Card shall be on file for every child enrolled in the Delaware Public Education system and the card must contain at a minimum, requests for the following information: student's name, birth date, school district, school, grade, homeroom or teacher, home address, home phone, mother/guardian's name and/or father/guardian's name, their place of employment and work phone, two other names, addresses and phone numbers for times when the parent or guardian can not be reached, family physician, name and phone, family dentist, name and phone, student's medical problems and allergies, the student's medical insurance and if possible the parent/guardian's signature. This information may be shared on a need to know basis.

**See 1 DE Reg. 1799 (5/1/98)**

### **802 Delaware School Health Record**

1.0 The "School Health Record" is confidential and shall be stored so that only duly authorized persons have access to it.

2.0 A "School Health Record" shall be prepared for each school child. When a child is promoted to another school in the district or transfers to another school in or out of state this shall accompany the other school records.

3.0 The health record will serve for the duration of the child's schooling. The school nurse shall use the "Student Health History Update" to keep health records current.

4.0 The "School Health Record" shall remain in the general school file or nurse's file during the pupil's attendance in school. The school nurse shall destroy any duplicate or partial health record after entries have been transferred to the official record so that there is only one correct and up-to-date record.

5.0 No health or psychological data shall be filmed with school academic records.

6.0 All student health records shall be retained at the school for two years after termination (graduation, drop-out).

7.0 All health records shall be transferred to the Delaware Public Archives which will retain the records for a total of 25 years.

**See 1 DE Reg. 1798 (5/1/98)**

### **803 Daily Log**

1.0 The school nurse shall maintain a daily log which includes at a minimum:

- 1.1 School name
- 1.2 Three point date
- 1.3 Student's first and last name
- 1.4 Time of arrival and departure
- 1.5 Presenting complaint
- 1.6 Nurse's assessment and plan
- 1.7 Disposition (return to class, sent home, etc.)
- 1.8 Parent contact, if appropriate
- 1.9 Complete nurse's signature

**See 1 DE Reg. 1800 (5/1/98)**

### **806 Physical Examinations**

1.0 All pupils upon entrance to the Delaware school system shall have had a physical examination within by a licensed medical physician, nurse practitioner or physician's assistant. The physical examination form can be given to the parent or guardian if requested.

1.1 New enterers have 14 school days to comply with the regulation before being excluded from school. A documented appointment with a licensed provider as stated above will defer exclusion.

1.2 All Students shall have a physical examination each year before participating in interscholastic sports (see regulation 1051, section 8.0 and regulation 1052, section 8.0).

1.3 Those selected students whose health status suggests further follow-up as a result of observations and/or conferences by the teacher and the school nurse shall have an additional physical examination or medical consultation.

1.4 Children of Christian Scientist parents may request exemption from physical exams by having their parents obtain the proper form from the "Committee on Publication for Delaware" which is responsible for such matters. The school should not furnish these forms.

1.5 The school nurse shall record all findings on the School Health Record.

### **807 Vision Screening**

1.0 All children in kindergarten or grade 1 and in grades 3, 5, 8, and 10 shall receive a vision screening by December

15th of the current school year.

1.1 Students new to the school system, teacher referrals, those students considered for special education placement and driver education students shall have a vision screening.

1.2 The school nurse shall record the results on the School Health Record.

1.3 The school nurse shall notify parents/guardians if the child has a suspected vision problem.

**See 1 DE Reg. 1797 (5/1/98)**

### **808 Hearing Screening**

1.0 All children in kindergarten or grade 1 and in grades 3, 5, 8 and in grade 10 or 11 shall receive a hearing screening by December 15th of the current school year.

1.1 Students new to the school system and those students considered for special education placement shall have a hearing screening.

1.2 Should any child fail the screening, a repeat screening shall be done within two (2) weeks of the initial screening.

1.3 The school nurse shall record the test results on the School Health Record.

1.4 The school nurse shall notify the parents/guardian that the child has failed the hearing screening and may have a hearing loss.

**See 1 DE Reg. 1797 (5/1/98)**

### **809 Orthopedic Screening**

1.0 All pupils in grades 5 through 9 shall have an orthopedic screening by December 15th of each year.

1.1 The school nurse shall notify the parents/guardian if a suspected deviation has been detected.

1.2 The school nurse shall record the findings on the school health record.

**See 1 DE Reg. 1813 (5/1/98)**

### **810 Accident Reporting**

1.0 In addition to entering an accident incident in daily log, the school nurse shall make a written report on the appropriate form to the district office in the following circumstances:

1.1 The school nurse has referred the student for medical evaluation, regardless of whether the parent/guardian followed through on that request.

1.2 The student has missed more than one-half day due to the accident.

**See 1 DE Reg. 1801 (5/1/98)**

### **826 Administration of Prescription Medications**

1.0 Medications prescribed by a licensed healthcare provider may be administered to students by the school nurse under the following conditions:

1.1 Request received from the parent/guardian.

1.2 The medication is brought/sent to school in the original container that is properly labeled with the student's name; the name of the medication; time; dosage; how it is to be administered; the physician's name; name of pharmacy and phone number; and a current date of the prescription.

1.3 Any allergies are noted.

1.4 All controlled substances are counted and reconciled at least once a month and kept under double lock.

1.5 The daily log or special medication record shows the student's name, time, and date of administration.

1.6 All long-term medications shall be preauthorized each year.

**See 1 DE Reg. 1802 (5/1/98)**

### **827 Administration of Nonprescription Medications**

1.0 Nonprescription medications may be administered by the school nurse to students. The school nurse shall do the following:

1.1 Assess the particular complaint and symptoms to determine if other measures can be used before medication is administered.

1.2 Look for a record of all allergies, especially to medications, on the student's school health record.

1.3 Have the permission of the parent or guardian to administer any medications.

1.4 Seek medical attention if the symptoms or conditions persist.

1.5 Record the student's name, name of medicine, dosage and time on the daily log.

**See 1 DE Reg. 1803 (5/1/98)**

### **828 Assistance With Medications on Field Trips**

1.0 Definitions

"Assist a student with medication" means assisting a student in the self-administration of a medication, provided that the medication is in a properly labeled container as hereinafter provided. Assistance may include holding the medication container for the student, assisting with the opening of the container, and assisting the student in self-administering the medication. Lay assistants shall not assist with injections. The one exception is with emergency medications where standard emergency procedures prevail in lifesaving circumstances.

"Field trip" means any off-campus, school-sponsored activity.

"Medication" means a drug taken orally, by inhalation, or applied topically, and which is either prescribed for a student by a physician or is an over-the-counter drug which a

parent or guardian has authorized a student to use.

"Paraprofessionals" mean teaching assistants or aides.

2.0 Teachers, administrators and paraprofessionals employed by a student's local school district are authorized to assist a student with medication on a field trip subject to the following provisions:

2.1 Assistance with medication shall not be provided without the prior written request or consent of a parent or guardian. Said written request or consent shall contain clear instructions including: the student's name; the name of the medication; the dose; the time of administration; and the method of administration. At least one copy of said written request or consent shall be in the possession of the person assisting a student with medication on a field trip.

2.2 The medication shall be in a container which is clearly labeled with the student's name, the name of the medication, the dose, the time of administration, and the method of administration. If the medication has been prescribed by a physician, it shall be in a container which meets United States Pharmacopoeia/National Formulary standards and, in addition to the information otherwise required by this section, shall bear the name of the prescribing physician, and the name and telephone number of the dispensing pharmacy.

2.3 A registered nurse employed by the school district in which the student is enrolled shall determine which teachers, administrators and paraprofessionals are qualified to safely assist a student with medication. Each such person shall complete a Board of Nursing approved training course developed by the Delaware Department of Education, pursuant to 24 Del.C. §1921. Said nurse shall complete instructor training as designated by the Department of Education and shall submit a list of successful staff participants to the Department of Education. No person shall assist a student with medication without written acknowledgment that he/she has completed the course and that he/she understands the same, and will abide by the safe practices and procedures set forth therein.

2.4 Each school district shall maintain a record of all students receiving assistance with medication pursuant to this regulation. Said record shall contain the student's name, the name of the medication, the dose, the time of administration, the method of administration, and the name of the person assisting.

2.5 Except for a school nurse, no employee of a school district shall be compelled to assist a student with medication. Nothing contained herein shall be interpreted to otherwise relieve a school district of its obligation to staff schools with certified school nurses.

### **~~829 The School Nurse and the Child with Special Health Needs~~**

~~1.0 The school nurse, as a member of the evaluation team shall:~~

~~1.1 Assist in identifying candidates for placement in a special program.~~

~~1.2 Conduct the initial health evaluation and parent a parent/guardian/ conference.~~

~~1.3 Assist in obtaining an in depth health and developmental history and home environment assessment.~~

~~1.4 Provide and interpret all pertinent information including results of recent physical assessments.~~

~~1.5 Develop the individual health maintenance plan with the student/parent if possible.~~

~~1.6 Provide the evaluation team with the health information necessary to develop the health component of the individual education plan, IEP.~~

~~1.7 Periodically confer with the student, parent and faculty to revise the health maintenance plan.~~

~~1.8 Help the student or the student's parent or guardian to access appropriate community resources.~~

~~1.9 Follow up on medical recommendations and report to teachers and appropriate personnel.~~

~~1.10 Provide and/or supervise nursing treatment, medications, and specialized health procedures with the following conditions:~~

~~1.10.1 A written request shall be obtained from the parent for the procedure.~~

~~1.10.2 A written authorization from the child's physician shall be on file.~~

~~1.10.3 Each change in the request from the parent or physician requires reauthorization. All requests shall be re-authorized each year.~~

~~1.10.4 A daily treatment log that includes child's name, date and time shall be kept on all medications and treatment administered with any reactions or comments noted.~~

### **811 School Health Record Keeping Requirements**

#### **1.0 Emergency Treatment Card**

1.1 An Emergency Treatment Card shall be on file for each public school student. The card shall contain general emergency procedures for the care of a student when the student becomes sick or injured at school. The card shall contain the student's name, birth date, school district, school, grade, home room or teacher, home address, home telephone and the name, place of employment and work telephone of the parent/guardian/Caregiver. The card shall also contain two other names, addresses and phone numbers of individuals who can be contacted at times when the parent/guardian or Caregiver can not be reached. The name and telephone number of the family physician and family dentist, any medical conditions and/or allergies the student has and the student's medical insurance shall be on the Emergency Treatment Card. The information on the Emergency

Treatment Card may be shared only on a need to know basis. The parent/guardian/Caregiver or the student (if 18 years or older) shall sign the card to assure they understand the purpose of the card and acknowledge the accuracy of the information.

## 2.0 School Health Record

2.1 A School Health Record shall be prepared and updated for each public school student. This record is confidential and shall be protected so that only duly authorized persons have access to it.

2.2 When a student transfers to another school in the district or transfers to another school in or out of state, the School Health Record shall be forwarded with the student's other school records.

2.3 The School Health Record shall be maintained for the duration of the student's schooling. The school nurse shall use the Student Health History Update form to keep health records current.

2.4 The School Health Record shall remain in the general school file or nurse's file during the student's attendance in school. The school nurse shall destroy any duplicate or partial health record after entries have been transferred to the official record so that there is only one correct and up-to-date record.

[Non-regulatory note: also see Department of Education Regulation 250 Procedures Related to the Collection, Maintenance and Disclosure of Student Data and the Delaware Public Archives Document *Delaware School Districts General Records Retention Schedule*.]

2.5 The school nurse shall document any nursing care provided including: the school name, a three point date, the person's (student, staff or visitor) first and last name, the time of arrival and departure, the presenting complaint, the nurse's assessment intervention plan and outcome, the disposition of the situation, the parent/other contact, if appropriate, and the nurse's complete signature.

2.5.1 Accident Reporting: In addition to documenting the care given at the time of an accident, the school nurse shall also complete the *Student Accident Report Form* if the school nurse has referred the student for a medical evaluation regardless of whether the parent/guardian/Caregiver or student (if 18 years or older) followed through on that request and/or if the student missed more than one-half day due to the accident.

3.0 The school nurse shall submit the Department of Education form, *Summary of School Health Services* for his or her building to the local school district or charter school designee. The district or charter school shall submit the summary of all school health services to the Department by

June 30<sup>st</sup> of each school year.

## **815 Physical Examinations and Screening**

### 1.0 Physical Examinations

1.1 All public school students shall have a physical examination that has been administered by a licensed medical physician, nurse practitioner or physician's assistant. The physical examination shall have been done within the two years prior to entry into school. Within fourteen calendar days after notification of the requirement for a physical examination, new enterers shall have received a physical examination or shall have a documented appointment with a licensed healthcare provider for a physical examination.

1.1.1 The requirement for the physical examination may be waived for students whose parent or legal guardian presents a written declaration acknowledged before a notary public, that because of individual religious beliefs, they reject the concept of physical examinations.

1.1.2 The school nurse shall record all findings on the School Health Record.

[Non regulatory note: regulations 1051 DIAA Senior High School Interscholastic Athletic Association and 1052 DIAA Junior High/Middle School Interscholastic Athletic Association for physical examination requirements associated with participation in sports.]

### 2.0 Screening

#### 2.1 Vision and Hearing Screening

2.1.1 Beginning with the school year 2004-2005, each public school student in kindergarten and in grades 2, 4, 7 and grades 9 or 10 shall receive a vision and a hearing screening by January 15<sup>th</sup>.

2.1.1.1 In addition to the screening requirements in 2.1.1, screening shall also be provided to new enterers, students referred by a teacher or an administrator, and students considered for special education.

2.1.1.1.1 Driver education students shall have a vision screening within a year prior to their in-car driving hours.

2.1.2 The school nurse shall record the results on the School Health Record and shall notify the parent/guardian/Caregiver or the student (if 18 years or older) if the student has a suspected problem.

#### 2.2 Postural and Gait Screening

2.2.1 Each public school student in grades 5 through 9 shall receive a postural and gait screening by December 15<sup>th</sup>.

2.2.2 The school nurse shall record the findings on the school health record and shall notify the parents/

guardian/Caregiver or the student (if 18 years or older) if a suspected deviation has been detected.

### **817 Administration of Medications and Treatments**

1.0 Medications, in their original container, and treatments may be administered to a public school student by the school nurse when a written request to administer the medication or treatment is on file from the parent/guardian/Caregiver or the student (if 18 years or older). The school nurse shall check the student health records and history for contraindications and all allergies, especially to the medications, and shall provide immediate medical attention if an allergic reaction is observed or make a referral if symptoms/conditions persist. The school nurse shall also document the student's name, the name of medication and/or treatment administered, the date and time it was administered and the dosage if medication was administered.

2.0 Any prescribed medication or treatment administered to a student, in addition to the requirements in 1.0, shall be prescribed by a licensed healthcare provider. Prescription medication shall be properly labeled with the student's name; the licensed healthcare provider's name; the name of the medication; the dosage; how and when it is to be administered; the name and phone number of the pharmacy and the current date of the prescription. The medication shall be in a container which meets United States Pharmacopoeia/National Formulary standards. Treatment, including, specialized health procedures, shall be signed by a licensed healthcare provider with directions on how and when to administer.

2.1 The prescription and the medication shall be current and long term prescriptions shall be re-authorized at least once a year.

2.2 All medications classified as controlled substances shall be counted and reconciled each month by the school nurse and kept under double lock.

3.0 Non-prescription medications may be given by the school nurse after the nurse assesses the complaint and the symptoms to determine if other interventions can be used before medication is administered and if all requirements in 1.0 have been met.

4.0 For a student who requires significant medical and/or nursing interventions, the Individual Education Program (IEP) team shall include the school nurse.

### 5.0 Assistance With Medications on Field Trips

#### 5.1 Definitions

"Assist a student with medication" means assisting a student in the self-administration of a medication, provided that the medication is in a properly labeled container as

hereinafter provided. Assistance may include holding the medication container for the student, assisting with the opening of the container, and assisting the student in self-administering the medication. Lay assistants shall not assist with injections. The one exception is with emergency medications where standard emergency procedures prevail in lifesaving circumstances.

"Field trip" means any off-campus, school-sponsored activity.

"Medication" means a drug taken orally, by inhalation, or applied topically, and which is either prescribed for a student by a physician or is an over-the-counter drug which a parent or guardian has authorized a student to use.

"Paraprofessionals" mean teaching assistants or aides.

5.2 Teachers, administrators and paraprofessionals employed by a student's local school district are authorized to assist a student with medication on a field trip subject to the following provisions:

5.2.1 Assistance with medication shall not be provided without the prior written request or consent of a parent guardian or Caregiver. Said written request or consent shall contain clear instructions including: the student's name; the name of the medication; the dose; the time of administration; and the method of administration. At least one copy of said written request or consent shall be in the possession of the person assisting a student with medication on a field trip.

5.2.2 The prescribed medication, in addition to the requirements in 1.0, shall be prescribed by a licensed healthcare provider. The medication shall be properly labeled with the students' name; the licensed healthcare provider's name; the name of the medication; the dosage; how and when it is to be administered; the name and phone number of the pharmacy and the current date of the prescription. The medication shall be in a container which meets United States Pharmacopoeia/National Formulary standards.

5.2.3 A registered nurse employed by the school district in which the student is enrolled shall determine which teachers, administrators and paraprofessionals are qualified to safely assist a student with medication. In order to be qualified, each such person shall complete a Board of Nursing approved training course developed by the Delaware Department of Education, pursuant to 24 Del.C. §1921. Said nurse shall complete instructor training as designated by the Department of Education and shall submit a list of successful staff participants to the Department of Education. No person shall assist a student with medication without written acknowledgment that he/she has completed the course and that he/she understands the same, and will abide by the safe practices and procedures set forth therein.

5.2.4 Each school district shall maintain a

record of all students receiving assistance with medication pursuant to this regulation. Said record shall contain the student's name, the name of the medication, the dose, the time of administration, the method of administration, and the name of the person assisting.

5.2.5 Except for a school nurse, no employee of a school district shall be compelled to assist a student with medication. Nothing contained herein shall be interpreted to otherwise relieve a school district of its obligation to staff schools with certified school nurses.

[Non-regulatory note: Regulation 876 Possession, Use and Distribution of Drugs and Alcohol Section 3.12 addresses student self administration of a prescribed asthmatic quick relief inhaler.]

## PROFESSIONAL STANDARDS BOARD

### 393 Delaware Professional Teaching Standards

#### A. Type Of Regulatory Action Requested

Amendment to Existing Regulation

#### B. Synopsis Of Subject Matter Of Regulation

The Professional Standards Board in cooperation and collaboration with the Department of Education seeks the approval of the State Board of Education to amend regulation 393 Delaware Professional Teaching Standards of the *Regulations of the Department of Education*. The proposed amendments align the Delaware Professional Teaching Standards with the Model Standards for Licensing General and Special Education Teachers of Students with Disabilities developed by the Interstate New Teacher Assessment and Support Consortium, a program of the Council of Chief State School Officers. The Delaware Professional Teaching Standards enacted in 1998 were aligned with the INTASC Model Standards for Teachers. The 2001 INTASC Model Standards for Licensing General and Special Education Teachers of Students with Disabilities reflect current research and changes resulting from the last reauthorization of IDEA. The amended regulation will also be renumbered to reflect its movement to the Professional Standards Board section of the regulations. The regulation concerns standards for teachers.

#### C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement and concerns the establishment of uniform standards for the performance of teachers.

2. Will the amended regulation help ensure that all

students receive an equitable education? The amended regulation helps ensure that all teachers demonstrate high standards of performance.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses teacher standards, not health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses teacher standards, not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision makers at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration and cooperation with the Department of Education, and with the consent of the State Board of Education.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation will be consistent with, and not an impediment to, the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the amended regulation?

14 Del. C. requires that we promulgate this regulation.

10. What is the cost to the state and to the local school boards of compliance with the amended regulation? There is no additional cost to local school boards for compliance with the amended regulation.

~~393~~ 1593 Delaware Professional Teaching Standards

1.0 Content: The Delaware Professional Teaching Standards establish a common set of knowledge, skills, and attributes expected of Delaware's teachers. In accordance with 14 Del. C. § 1205, this regulation shall be applied to all

teachers employed within the public schools and charter schools of the State of Delaware.

2.0 Definitions: The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

“Alignment of assessment” means ~~T~~the ability to determine what students know and are able to do with respect to the curriculum is dependent upon how well the assessment methods and tasks are aligned with, or in agreement with, the curriculum. Assessments should be aligned with the content of the curriculum, consistent with the instructional approaches, and address the range of topics as weighted in the curriculum.

“Authentic experiences” means ~~T~~the use of performances, or "authentic activities", such as writing a letter, solving a real-world mathematics problem, or investigating a question in science, as a way to teach and to assess student learning.

“Culturally and/or linguistically diverse” means ~~S~~tudents and families who come to schools with cultural and/or language backgrounds that differ from the predominant experience of monolingual English speakers. The term calls attention to the range of geographic background, cultural heritage, and level of English proficiency found among students in schools.

“Codes of conduct” mean ~~many professional educational organizations have adopted~~ codes of conduct adopted by professional educational organizations that establish the ethical parameters that guide professional behavior. The codes range from general guides for teachers (NEA) to more specific guidelines for teachers of certain subject area.

“Communication theory” means ~~A~~an understanding of the principles of communication theory (e.g., productive and receptive communication, cultural context of language, metacommunication) as they apply in practice in the classroom.

“Community” means ~~T~~the school community and includes teachers, administrators, students, and parents and/or guardians. However, the schools are a part of a larger community (i.e., neighborhood, town, city) that supports the school and the students will live.

“Disciplines” means ~~A~~academic disciplines which include the arts, humanities, languages, mathematics, and natural and social sciences that provide the basis of the subjects taught in schools.

“Discourse” means ~~discourse refers to~~ both the writing and speaking in the classroom that teachers and students engage in as they seek ways to represent ideas, concepts and their thinking. It is the ways in which they discuss agree and disagree, and explore the discipline.

“Diverse learners” means ~~S~~tudents are individuals who differ in the ways in which they learn. They have different

learning styles, modalities, interests, talents and personalities, all of which affect the ways in which teachers design instruction.

“Domains” means ~~T~~the broad areas of human development - intellectual, social, emotional, and physical - that influence learning.

“Educational Technology” means ~~T~~the use of any technology (e.g., word processing, data retrieval, electronic mail) as a set of skills that can be learned and used to support learning in the classroom.

“Habits of ~~M~~mind” mean ~~M~~mental habits influence what students do and how they learn. The development of habits of mind, like perseverance, confidence, a willingness to explore new ideas and experiment, seeking feedback from others, valuing accuracy and precision, avoiding impulsivity, are a part of the teaching and learning process.

“Health” means ~~H~~health issues that can affect learning range from cerebral palsy, Down's Syndrome, and other severe disabilities to less pronounced and not easily detected concerns such as diabetes or asthma or nutrition. An awareness of these conditions and how they affect learning furthers a teacher's ability to meet the needs of students.

“Instructional ~~T~~technology” means ~~T~~the use of specific technologies that are integrated with content to enhance learning within the disciplines (e.g., graphing calculators in mathematics, accounting or tax software in business, editing software for writing).

“Learning ~~T~~theory” means ~~A~~an understanding of the principles of learning theory (e.g., behaviorism, constructivism, transmission of knowledge) as they apply in practice in the classroom.

“Meaningful (to students)” means ~~Meaningful is intended~~ to convey a sense of purpose to students for their learning. The content takes on significance because of the connections that are made between the learning and students' lives. It helps students make sense out of what they are learning.

“Measurement ~~T~~theory” means ~~A~~an understanding of the principles of measurement theory (e.g., validity, reliability, bias in testing, test construction, interpretation of tests) as they apply in practice in the classroom.

“Media ~~C~~ommunication” means ~~T~~the use of technologies that document events (e.g., audio- tape, videotape, electronic transfer of information through computer programs) as a means of communicating information.

“Methods (~~P~~rocess) of ~~I~~nquiry” means ~~Inquiry is~~ the process through which students make new discoveries, extend their knowledge, or deepen their understandings of things they already know. Students need to be able to create, observe, compare, question, record and interpret data, evaluate and revise, search resources, and share information.

“Multicultural” means ~~The term multicultural is usually used as an adjective to describe the~~ diverse cultural backgrounds of students and their families and school

personnel, with an emphasis on their ethnicity, race, religion, gender, socio-economic status, and family structures. The term takes on importance in the development of teachers as they learn to recognize the importance of these factors in the education process.

“Multiple Assessments” means Decisions about what students know and are able to do should be based on an analysis of information obtained from a variety of sources of evidence. Assessments should be conducted in a variety of formats (e.g., written and oral tests, observations, performances) and address the full range of content.

“Multiple Intelligences” means Based on the writing of Howard Gardner, the identification of seven abilities (i.e., linguistic, logical-mathematical, spatial, musical, bodily-kinesthetic, inter-personal, intra-personal) that describe distinct aspects of “intelligent.”

“Nonverbal Communication” means Communication through means other than the use of words (e.g., facial expressions, body position, action).

“Pedagogical Knowledge” means Pedagogical knowledge is the knowledge of how to teach the knowledge of instructional methods.

“Performance” means Carrying out or completing an activity or production which displays a student's knowledge and ability through demonstration.

“Performance Modes” means The range of ways in which students can demonstrate what they know and are able to do (e.g., writing, speaking, visual works, videotapes, enacting).

“Professional Growth” means The process in which teachers examine the relationship between what they and their students are doing and what their students are learning. This process involves self-reflection and feedback from students and colleagues and an exploration of the findings from research, as well as the use of this information as the basis for improving personal practice in the future.

“Structures” means The structures of disciplines which provide the overall framework which both connects and transcends the skills and content of the discipline. The big picture or outline of the discipline helps students understand the commonalities and the interrelationships of concepts within a discipline. An understanding of the structure of a discipline allows students to see connections as they acquire new knowledge.

“Technology” means The use of the word technology is meant to encompass both educational and instructional technology within this document unless one of these terms is used specifically.

“Theory” means The knowledge of the principles and methods of a science (e.g., learning, measurement) as contrasted with its application.

~~3.0 1.0 Content:~~ The teacher understands the core concepts and structure(s) of the discipline(s) and their related content

standards and creates learning experiences that make the content meaningful to students.

#### 3.1 Knowledge Components

3.1.1 Understands major concepts, principles, and theories that are central to the discipline

3.1.2 Understands the dynamic and complex nature of the content of the discipline

3.1.3 Understands the processes of inquiry central to the discipline

3.1.4 Understands the relationship of knowledge within the discipline to other content areas and to life applications

#### 3.2 Performance Indicators

3.2.1 Uses a variety of explanations and multiple representations of concepts to help develop conceptual understanding

3.2.2 Anticipates and adjusts for common misunderstandings that impede learning within the discipline

3.2.3 Engages students in generating and testing knowledge according to the processes of inquiry of the discipline

3.2.4 Creates learning experiences that make connections to other content areas and to life experiences

~~4 2.0~~ Human Development and Learning: The teacher understands how children develop and learn and provides learning opportunities that support the intellectual, social, emotional and physical development of ~~the students~~ each learner.

#### 4.1 Knowledge Components

4.1.1 Understands learning theory, including how students construct knowledge, acquire skills, and develop habits of mind

4.1.2 Understands human development, including the ranges of individual variation within each domain

4.1.3 Understands the interaction between student development and learning

#### 4.2 Performance Indicators

4.2.1 Chooses developmentally appropriate instructional strategies that promote student learning

4.2.2 Develops concepts and principles at different levels of complexity so that they are meaningful to students at varying levels of development

~~4 3.0~~ Diverse Learners: The teacher understands how students differ and adapts instruction for diverse learners.

#### 4.3 Knowledge Components

4.3.1 Understands how student learning is influenced by individual experiences, talents, and prior learning, as well as language, culture, gender, health, family, and community

4.3.2 Understands differences in approaches to learning and performance, including learning styles, multiple

intelligences, and performance modes

43.1.3 Understands cultural diversity and how to incorporate multi-cultural experiences into instruction

43.1.4 Understands areas of exceptionality in learning, including talented and gifted and special needs, and how to access strategies to accommodate individual differences

43.1.5 Understands the process of second language acquisition and how to access strategies to support learning for students whose first language is not English

43.1.6 Understands the needs of culturally and/or linguistically diverse students

43.1.7 Understands when and how to access appropriate resources or services to meet special learning needs

43.1.8 Understands the major principles and parameters of federal and state disability legislation and regulation.

43.2 Performance Indicators

43.2.1 Accepts and values all students

43.2.2 Treats all students equitably

43.2.3 Respects students as individuals with differing experiences, skills, talents, and interests

43.2.4 Uses cultural diversity and individual student experiences to enrich instruction

43.2.5 Designs instructional activities that address the range of student learning styles, multiple intelligences and performance modes

43.2.6 Makes appropriate provisions for individual students who have particular learning differences or needs

54.0 Communication: The teacher understands and uses effective communication.

54.1 Knowledge Components

~~54.1.1 Understands communication theory and its application~~ 54.1.1 Understands the general types of communication strategies and appropriate assistive technology that can be incorporated as a regular part of their instruction.

54.1.2 Understands effective oral, written, nonverbal, and media communication techniques

54.1.3 Understands the importance of audience and purpose when selecting ways to communicate ideas

~~54.1.4 Understands how cultural and gender differences may affect communication in the classroom~~ 54.1.4 Understands potential positive and negative effects of their verbal and non-verbal messages on students with cultural, gender and ability differences.

54.2 Performance Indicators

54.2.1 Uses a variety of communication techniques

54.2.2 Communicates effectively with diverse populations

54.2.3 Models accurate and grammatically

correct language

54.2.4 Creates opportunities for students to learn effective communication

65.0 Learning Environment: The teacher understands individual and group behavior and creates a learning environment that fosters active engagement, self-motivation, and positive social interaction.

65.1 Knowledge Components

65.1.1 Understands principles of effective classroom management

65.1.2 understands factors that influence motivation and engagement and how to help students become self-motivated

65.1.3 Understands individual behavior and how individuals behave in groups

65.1.4 Understands group dynamics and how groups function within a community

65.1.5 Understands how to help students learn to participate effectively in group

65.2 Performance Indicators

65.2.1 Establishes and maintains a classroom environment with clear expectations and standards of behavior

65.2.2 Organizes, allocates, and manages time, materials, and physical space to support learning

65.2.3 Establishes classroom practices that promote a safe environment

65.2.4 Creates a learning community which respects individual differences

65.2.5 Establishes a classroom environment which promotes positive relationships, cooperation, and purposeful learning

65.2.6 Creates a classroom environment where student thoughts and ideas are a basis for exploring and developing understanding

65.2.7 Creates a learning community in which students work independently and collaboratively

65.2.8 Encourages students to assume responsibility for their own learning and behavior

76.0 Planning for Instruction: The teacher understands instructional planning and designs instruction based upon knowledge of the disciplines, students, the community, and Delaware's student content standards.

76.1 Knowledge Components

76.1.1 Understands how to incorporate learning theory, content, curriculum development, and assessment, and student development when planning

76.1.2 Understands that effective instructional planning includes the alignment of assessment and instruction prior to implementation

76.1.3 Understands how to develop short- and long-range plans consistent with curriculum goals, learner

diversity, and learning theory

7.1.4 Understands how to make connections between student experiences and education goals

7.1.5 Understands how to maximize the participation and engagement of students with disabilities in a general or expanded curriculum.

7.2 Performance Indicators

7.2.1 Evaluates teaching resources and materials for accuracy and usefulness

7.2.2 Applies principles of scope and sequence when planning instruction

7.2.3 Creates approaches to learning that are interdisciplinary and that integrate multiple content areas

7.2.4 Creates and selects learning materials and learning experiences appropriate for the discipline and curriculum goals

7.2.5 Uses student prior knowledge and principles of effective instruction to plan learning activities relevant to students

7.2.6 Incorporates authentic experiences into instructional planning

7.2.7 Creates multiple learning activities that allow for student choice

7.2.8 Establishes and communicates expectations for student learning

7.2.9 Creates and adapts short- and long-range plans to achieve the expectations for student learning

7.2.10 Incorporates assessment components into instructional planning

87.0 Instructional Strategies: The teacher understands a variety of instructional approaches and uses them to promote student thinking, understanding, and application of knowledge.

87.1 Knowledge Components

87.1.1 Understands principles and techniques of a broad range of instructional approaches, including questioning, problem solving, discourse, activation of prior knowledge, and student reflection on learning

87.1.2 Understands the relationship between instructional approaches, assessment, and the types of learning promoted

87.1.3 Understands how instructional materials and educational technologies enhance learning

87.2 Performance Indicators

87.2.1 Uses a range of instructional approaches that allows students to explore concepts and develop an in-depth understanding of content

87.2.2 Designs lessons that routinely engage students in activities that develop problem solving and critical thinking skills

87.2.3 Designs instructional activities that provide opportunities for students to apply knowledge

87.2.4 Uses a variety of materials and educational

technologies to enhance student thinking and further conceptual understanding

87.2.5 Assumes different roles in the instructional process based on the content and purposes of instruction

87.2.6 Uses a range of questioning techniques to promote different levels of understanding

87.2.7 Emphasizes communication as a vehicle for learning, through the use of discussion, listening, collaboration, and responding to the ideas of others

87.2.8 Links new concepts to student prior knowledge

87.2.9 Promotes student awareness of their own thought processes and how to use reflection to build new understandings

87.2.10 Incorporates assessment components into instructional delivery

98.0 Assessment: The teacher understands multiple assessment strategies and uses them for the continuous development of students.

98.1 Knowledge Components

98.1.1 Understands measurement theory, including principles of testing and assessment (e.g., design, validity, reliability, and bias)

98.1.2 Understands assessment as a means of collecting information about student progress

98.1.3 Understands the purposes and characteristics of different kinds of assessments

98.1.4 Understands how to select, construct, and use assessment strategies and instruments for diagnosis and evaluation of learning

98.1.5 Understands how to use the results of assessment to reflect on and modify teaching

98.2 Performance Indicators

98.2.1 Uses assessment to diagnose student learning needs as a basis for designing instruction

98.2.2 Uses a variety of assessment modes and multiple measures to evaluate student learning

98.2.3 Uses both formal and informal assessment strategies to monitor and evaluate student understanding, progress, and performance

98.2.4 Aligns assessment with instruction

98.2.5 Maintains accurate records and communicates student progress

98.2.6 Involves students in self-assessment to help them become aware of their strengths and needs

98.2.7 Encourages students to establish personal goals for learning based on self-assessment and assessment results

98.2.8 Modifies instruction based on assessment results

109.0 Professional Growth: The teacher understands the

importance of continuous learning and pursues opportunities to improve teaching.

109.1 Knowledge Components

109.1.1 Understands that reflection on teaching is an integral part of professional growth

109.1.2 Understands the implications of educational research for teaching

109.1.3 Understands methods of inquiry that provide for a variety of self-assessment and problem-solving strategies for reflecting on practice

109.2 Performance Indicators

109.2.1 Engages in continuous learning

109.2.2 Participates in professional discourse about educational issues

109.2.3 Uses classroom observation, information about students, pedagogical knowledge, and research as sources for active reflection, evaluation, and revision of practice

109.2.4 Collaborates with other professionals as resources for problem-solving, generating new ideas, sharing experiences, and seeking and giving feedback

11+0.0 Professional Relationships: The teacher understands the role of the school in the community and collaborates with colleagues, parents/guardians, and other members of the community to support student learning and well-being.

11+0.1 Knowledge Components

11+0.1.1 Understands how schools are organized and operate

11+0.1.2 Understands schools as organizations within the larger community context

11+0.1.3 Understands the importance of community-school interaction

11+0.1.4 Understands the importance of collaboration in education

11+0.2 Performance Indicators

11+0.2.1 Cooperates with colleagues to develop an effective learning climate within the school

11+0.2.2 Collaborates with other professionals to solve problems and make decisions to promote student success

11+0.2.3 Develops relationships with parents and guardians to acquire an understanding of the students' lives outside of the school

11+0.2.4 Works effectively with parents/guardians and other members of the community to advocate for student need and to promote learning

11+0.2.5 Identifies and uses community resources to enhance student learning and to provide opportunities for students to explore career opportunities

12+1.0 Educational Technology: The teacher understands the role of educational technology in learning and uses

educational technology as an instructional and management tool.

12+1.1 Knowledge Components

12+1.1.1 Understands how to use various educational technological tools to access and manage information

12+1.1.2 Understands how to integrate educational technology into classroom instruction

12+1.1.3 Understands how to review and evaluate educational technologies to determine instructional value

12+1.1.4 Understands the uses of instructional technology to address student needs

12+1.2 Performance Indicators

12+1.2.1 Designs instruction to promote student skills in the use of educational technologies to access and manage information

12+1.2.2 Uses a wide range of instructional technologies to enhance student learning and problem-solving

12+1.2.3 Uses technological advances in communication to enrich discourse in the classroom

12+1.2.4 Uses appropriate educational technology to create and maintain data bases for monitoring student progress

13+2.0 Professional Conduct: The teacher understands and maintains standards of professional conduct guided by legal and ethical principles.

13+2.1 Knowledge Components

13+2.1.1 Understands school policies and procedures

13+2.1.2 Understands legal issues in education

13+2.1.3 Understands the codes of conduct of professional education organizations

13+2.2 Performance Indicators

13+2.2.1 Acts in the best interests of students

13+2.2.2 Follows school policies and procedures, respecting the boundaries of professional responsibilities, when working with students, colleagues, and families

13+2.2.3 Follows local, state, and federal law pertaining to educational and instructional issues, including regulations related to student rights and teacher responsibilities

13+2.2.4 Interacts with students, colleagues, parents, and others in a professional manner

13+2.2.5 Follows codes of professional conduct adopted by the Delaware Professional Standards Board.

~~13.0 "Alignment of Assessment": The ability to determine what students know and are able to do with respect to the curriculum is dependent upon how well the assessment methods and tasks are aligned with, or in agreement with, the curriculum. Assessments should be aligned with the content of the curriculum, consistent with~~

the instructional approaches, and address the range of topics as weighted in the curriculum.

**"Authentic Experiences"**: The use of performances, or "authentic activities", such as writing a letter, solving a real-world mathematics problem, or investigating a question in science, as a way to teach and to assess student learning.

**"Culturally and/or Linguistically Diverse"**: Students and families who come to schools with cultural and/or language backgrounds that differ from the predominant experience of monolingual English speakers. The term calls attention to the range of geographic background, cultural heritage, and level of English proficiency found among students in schools.

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**"Methods (Process) of Inquiry"**: Inquiry is the process through which students make new discoveries, extend their knowledge, or deepen their understandings of things they already know. Students need to be able to create, observe, compare, question, record and interpret data, evaluate and revise, search resources, and share information.

**"Multicultural"**: The term multicultural is usually used as an adjective to describe the diverse cultural backgrounds of students and their families and school personnel, with an emphasis on their ethnicity, race, religion, gender, socio-economic status, and family structures. The term takes on importance in the development of teachers as they learn to recognize the importance of these factors in the education process.

**"Multiple Assessments"**: Decisions about what students know and are able to do should be based on an analysis of information obtained from a variety of sources of evidence. Assessments should be conducted in a variety of formats (e.g., written and oral tests, observations, performances) and address the full range of content.

**"Multiple Intelligences"**: Based on the writing of Howard Gardner, the identification of seven abilities (i.e., linguistic, logical-mathematical, spatial, musical, bodily-kinesthetic, inter-personal, intra-personal) that describe distinct aspects of "intelligent."

**"Nonverbal Communication"**: Communication through

means other than the use of words (e.g., facial expressions, body position, action):

~~“Pedagogical Knowledge”: Pedagogical knowledge is the knowledge of how to teach the knowledge of instructional methods.~~

~~“Performance”: Carrying out or completing an activity or production which displays a student's knowledge and ability through demonstration.~~

~~“Performance Modes”: The range of ways in which students can demonstrate what they know and are able to do (e.g., writing, speaking, visual works, videotapes, enacting).~~

~~“Professional Growth”: The process in which teachers examine the relationship between what they and their students are doing and what their students are learning. This process involves self-reflection and feedback from students and colleagues and an exploration of the findings from research, as well as the use of this information as the basis for improving personal practice in the future.~~

~~“Structures”: The structures of disciplines provide the overall framework which both connect and transcend the skills and content of the discipline. The big picture or outline of the discipline helps students understand the commonalities and the interrelationships of concepts within a discipline. An understanding of the structure of a discipline allows students to see connections as they acquire new knowledge.~~

~~“Technology”: The use of the word technology is meant to encompass both educational and instructional technology within this document unless one of these terms is used specifically.~~

~~“Theory”: The knowledge of the principles and methods of a science (e.g., learning, measurement) as contrasted with its application.~~

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## **DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

### **DIVISION OF LONG TERM CARE RESIDENTS PROTECTION**

Statutory Authority: 11 Delaware Code,  
Chapter 85 (11 Del.C. Ch. 85)

#### **Regulations Governing the Adult Abuse Registry**

##### **Public Notice**

The Department of Health and Social Services (DHSS), Division of Long Term Care Residents Protection, has prepared two draft regulations amending the Regulations Governing the Adult Abuse Registry pursuant to 11 Del. C., Section 8564(g). The first proposed regulation specifies that

the information to be disclosed upon completion of an investigation shall include the date and time of the incident if that information is known. The second proposed regulation strikes the use of the term “adult abuse” in order to acknowledge that various criminal convictions may result from conduct which has also led to placement on the Adult Abuse Registry.

##### **Invitation For Public Comment**

A public hearing will be held as follows:

Wednesday, June 4, 2003, 9:00 AM  
Room 301, Main Building  
Herman Holloway Campus  
1901 N. DuPont Highway  
New Castle

For clarification or directions, please call Gina Loughery at 302-577-6661.

Written comments are also invited on these proposed revised regulations and should be sent to the following address:

John Thomas Murray  
Division of Long Term Care Residents Protection  
3 Mill Road, Suite 308  
Wilmington, DE 19806

Written comments will be accepted until the conclusion of the public hearing.

##### **Section I: Definitions**

**"Abuse"** shall have the same meaning as contained in 16 Del. C., § 1131, and shall include mistreatment, neglect and financial exploitation as defined therein.

**"Child Care Facility"** means any child care facility which is required to be licensed by the Department of Services for Children, Youth and Their Families.

**"Contractor"** means an entity under contract to provide services for more than 20 hours per week (aggregate) and for more than six weeks in a twelve month period for a health care service provider, and whose employees have the opportunity for direct access to persons receiving care. For purposes of these regulations, contractor does not include construction contractors.

**"Department"** means the Department of Health and Social Services.

**"Direct Access"** means the opportunity to have personal contact with persons receiving care during the course of one's assigned duties.

**"Division"** means the Division of Long Term Care Residents Protection.

**"Health Care Service Provider"** means any person or

entity that provides services in a custodial or residential setting where health, nutritional or personal care is provided for persons receiving care, including but not limited to, hospitals, home health care agencies, adult care facilities, temporary employment agencies and contractors that place employees or otherwise provide services in custodial or residential settings for persons receiving care, and hospice agencies. Health Care Service Provider does not include any private individual who is seeking to hire a self-employed health caregiver in a private home.

**"Nursing Facility and Similar Facility"** means any facility required to be licensed under 16 Del. C., Ch. 11. This includes, but is not limited to, facilities commonly called nursing homes, assisted living facilities, intermediate care facilities for persons with mental retardation, neighborhood group homes, family care homes and rest residential care facilities. Also included are the Stockley Center, the Delaware Psychiatric Center and hospitals certified by the Department of Health and Social Services pursuant to 16 Del. C. § 5001 or 5136.

**"Person Receiving Care"** means any person who, because of his/her physical or mental condition, requires a level of care and services suitable to his/her needs to contribute to his/her health, comfort and welfare.

**"Person Seeking Employment"** means any person applying for employment with or in a health care service provider, nursing facility or similar facility that may afford direct access to persons receiving care at such facility, or a person applying for licensure to operate a child care facility. It shall also include a self-employed health caregiver who has direct access in any private home.

**"Substantiated Pending Appeal"** refers to a placement on the Registry based on an investigative finding prior to the subject exercising his/her right to appeal.

**"Substantiated Abuse"** means that, weighing the facts and circumstances, a reasonable person has concluded by a preponderance of evidence that the identified individual has committed adult abuse for the purpose of placement on the Adult Abuse Registry.

**See 5 DE Reg. 1073 (11/1/01)**

## Section 2 Use of Registry

(A) No health care service provider, to include nursing and similar facilities, or child care facility shall hire any person seeking employment or retain any contractors without requesting and receiving an Adult Abuse Registry check for such person.

(1) Any employer who is required to request an Adult Abuse Registry check shall obtain a statement signed by the person seeking employment wherein the person authorizes a full release for the employer to obtain the information provided pursuant to such a check. Said authorization shall include the following language: "I hereby release the indicated employer to obtain from the Division of

Long Term Care Residents Protection any information concerning me which may be on the Adult Abuse Registry pursuant to 11 Del. C., § 8564."

(2) When exigent circumstances exist which require an employer to fill a position in order to maintain the required or desired level of service, the employer may hire a person seeking employment on a conditional basis after the employer has requested an Adult Abuse Registry check.

(3) The person shall be informed in writing, and shall acknowledge in writing, that his or her employment is conditional, and contingent upon receipt of the Adult Abuse Registry check.

(B) Private individuals seeking to hire an individual to provide healthcare services in a private residence may request the Division to determine if the potential employee is listed on the Adult Abuse Registry. A short letter of request along with a release form signed by the prospective employee may be mailed or faxed to the Division of Long Term Care Residents Protection (DLTCRP) # 3 Mill Road, Suite 308, Wilmington, DE 19806, fax number (302) 577-6673.

**See 5 DE Reg. 1073 (11/1/01)**

## Section 3: Investigation of Adult Abuse

(A) The Division shall investigate any individual against whom an allegation of adult abuse has been made in accordance with the timeframes delineated in 16 Del. C., § 1134(d).

(B) If the investigation substantiates pending appeal that the alleged abuse occurred, the Division's Investigations Unit Chief shall enter on the Adult Abuse Registry, with a finding of "Substantiated Pending Appeal," the individual's name, date/time of the incident, a description of same and the length of time the finding shall remain on the Registry.

(C) The Division may accept preliminary investigations by a state agency or an entity contracted by a state agency. The Division will review and may revise the findings upon further investigation.

(D) Upon placement of a person on the Adult Abuse Registry, the Division will notify the facility from which the complaint originated as well as the current employer, if different, and the victim that the person is on the Registry as "Substantiated Pending Appeal."

**See 5 DE Reg. 1073 (11/1/01)**

## Section 4: Administrative Hearings

(A) An individual against whom an allegation is substantiated pending appeal shall be notified by certified mail at his/her home address, to be followed by written notice in care of his/her current employer at the discretion of the Division, that his/her name has been entered on the Adult Abuse Registry and shall be offered a right to an administrative hearing. The burden of proof in such hearing shall be on the Division. Individuals shall be informed upon

completion of the investigation of the following:

- (1) The date and time of the incident if known.
- (2) The name and type of facility where the incident occurred.
- (3) A brief description of the incident.
- (4) Length of time the finding remains on the Adult Abuse Registry.

(B) All requests for an administrative hearing must be received in writing, postmarked within 30 days of the date of the notice that a finding of abuse has been substantiated pending appeal. The Director or his/her designee shall dismiss untimely requests for hearing except when the individual submits evidence of good cause.

(C) An individual who fails to request an administrative hearing as described above shall have his/her name and information regarding the incident changed from a finding of "Substantiated Pending Appeal" to a finding of "Substantiated Abuse" on the Adult Abuse Registry. At that time the Division shall notify the individual, the facility from which the complaint originated as well as the current employer, if different, and the victim that the individual is on the Registry with a finding of "Substantiated Abuse."

(D) An individual who has entered a plea or who has been convicted by a court of law of adult abuse a criminal offense based on the same conduct that resulted in placement on the Adult Abuse Registry shall have the right to an administrative hearing solely to challenge the proposed length of time of registration on the Adult Abuse Registry.

(E) The hearing officer shall have the power to compel the attendance of witnesses and the production of evidence. Under no circumstance shall the hearing officer order the release of the investigative report and documents attached thereto, provided however, the hearing officer may order the release of statements of witnesses.

(F) The hearing officer should receive requests for witnesses and/or the production of evidence no less than ten business days prior to the hearing date.

(G) The individual shall be afforded an opportunity to appear with or without an attorney, submit documentary evidence, present witnesses, and question any witness the Division presents. Limited continuances shall be granted for good cause.

(H) If, at the conclusion of the hearing, the hearing officer concludes by a preponderance of evidence, that the identified individual has committed adult abuse, for the purpose of placement on the Adult Abuse Registry, a notice of "Substantiated Abuse" shall be placed on the Adult Abuse Registry. If, at the conclusion of the hearing, the hearing officer concludes that the individual has not committed adult abuse, the finding of "Substantiated Pending Appeal" shall be removed from the Adult Abuse Registry.

(I) The hearing officer shall render a written decision within thirty working days of the hearing and will notify the

individual, the Division, the facility and the victim of the decision. The notice will specify the reasons for the decision and, if the finding is substantiated, the length of time the finding of substantiated abuse shall remain on the Adult Abuse Registry.

(J) Any person placed on the Adult Abuse Registry shall have the right to appeal the decision within thirty days of the finding. The decision of the hearing officer may be appealed on the record to Superior Court.

**See 5 DE Reg. 1073 (11/1/01)**

#### **Section 5: Length of Time on the Adult Abuse Registry**

(A) The length of time on the Adult Abuse Registry shall be based on the seriousness of the incident and whether there exists a pattern of adult abuse. Evidence of mitigating circumstances may be considered.

(B) The names of registrants with findings of abuse, neglect or misappropriation entered on the Registry of Nurse Aides created pursuant to 42 CFR § 483 shall be entered on the Adult Abuse Registry with a finding of substantiated abuse. There shall be a right of appeal for findings entered on the Adult Abuse Registry under this section solely to challenge the proposed length of time of registration on the Adult Abuse Registry.

(C) Upon final disposition of the allegation, the Division shall notify, in writing, the victim, the facility where the incident occurred as well as the current employer of the individual, if different, of the final disposition.

**See 5 DE Reg. 1073 (11/1/01)**

#### **Section 6: Removal of a Person from the Adult Abuse Registry**

(A) The Department shall be authorized to remove a person from the Adult Abuse Registry before the expiration of his/her registration period when the Department deems that the person no longer poses a threat to any person receiving care in accordance with 11 Del. C., § 8564(g).

(B) A person whose name has been placed on the Adult Abuse Registry shall have the right to petition the Division, in writing, for the removal of his/her name from the Registry. Said petitioner must demonstrate:

(1) A minimum of twelve months has passed since his/her placement on the Registry.

(2) Affirmative steps have been taken to correct behavior that led to placement on the Registry, i.e. anger management counseling, drug/alcohol treatment, sensitivity training, etc.

(3) Demonstrated improved behavior through work references.

(C) The Division will evaluate the information provided by the petitioner and respond in writing within 60 days of receipt of all information provided by the petitioner. The Division is authorized to grant or deny the removal based on the review of the information presented. If the

Division denies the request, the petitioner may request a hearing to appeal the denial, or reapply for the removal after 6 months or when the petitioner can produce evidence of performance of the affirmative steps listed above.

**See 5 DE Reg. 1073 (11/1/01)**

#### **Section 7: Disclosure of Adult Abuse Registry Records**

Except as otherwise provided in these regulations, the dissemination of information contained in the Adult Abuse Registry shall be limited as follows:

(A) Hearing Officer Opinions shall be released upon request to the following:

- (1) The subject of the hearing.
- (2) A victim identified by name in the record or his/her legal representative.
- (3) Law enforcement officials pursuant to an official investigation.
- (4) The Long Term Care Ombudsman pursuant to a complaint from a victim identified in the record.
- (5) The Medicaid Fraud Control Unit of the Department of Justice.

(6) The Division of Professional Regulation if a finding of substantiated abuse pertains to a licensed professional.

(B) Investigative files shall be released upon request to:

- (1) Law enforcement officials pursuant to an official investigation.
- (2) The Medicaid Fraud Control Unit of the Department of Justice.
- (3) Rights protection agencies otherwise entitled under applicable federal or state law.

**See 5 DE Reg. 1073 (11/1/01)**

#### **ADDENDUM REPORTING TO NURSE AIDE REGISTRY**

In accordance with 42 CFR § 483, the Division of Long Term Care Residents Protection will report findings of abuse to the Nurse Aide Registry under the following procedure:

1. When the Division has substantiated pending appeal a finding of abuse, neglect, mistreatment or financial exploitation against a certified nurse assistant, a determination will be made whether the substantiated findings meet the criteria required in the federal regulations or the criteria in state statute and regulations.

2. If the findings support the criteria for abuse, mistreatment or misappropriation of property in the federal regulations, the certified nurse assistant will be notified that his/her name is both reported to the Nurse Aide Registry and placed on the Adult Abuse Registry, and that he/she has a right to a hearing. The CNA will also be notified that, with regard to the Nurse Aide Registry, a substantiated finding will result in a lifetime prohibition against employment in a federally certified facility.

3. If the findings support the criteria for neglect in the federal regulations, the certified nurse assistant will be notified that his/her name is both reported to the Nurse Aide Registry and placed on the Adult Abuse Registry, and that he/she has a right to a hearing. The CNA will also be notified that, with regard to the Nurse Aide Registry, a substantiated finding of neglect will result in a lifetime prohibition against employment in a federally certified facility. However, the CNA will be further informed of his/her right to petition the Division to have the report removed from the Nurse Aide Registry in accordance with §1819(g)(1)(D) of the Social Security Act.

4. The notice to the certified nurse assistant will include an explanation that the hearing described in the Adult Abuse Registry regulations will also consider the placement of the CNA on the Nurse Aide Registry. The CNA will be informed that if the evidence presented at a hearing does not warrant a finding of abuse, neglect, mistreatment or misappropriation of property under the federal regulations, the evidence will be considered to determine whether it meets the criteria for abuse, neglect, mistreatment or financial exploitation under the state Adult Abuse statute.

**See 5 DE Reg. 1073 (11/1/01)**

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#### **DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code, Section 107 (31 Del.C. §107)

#### **Public Notice**

#### **Fair Hearing Practices and Procedures**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, Delaware Health and Social Services (DHSS) / Division of Social Services proposing to amend the Division of Social Services Manual (DSSM) to make several "housekeeping" changes regarding the agency's fair hearing practices and procedures.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720-0906 by May 31, 2003.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by

other interested persons.

**DSSM 5100 Legal Base**

- The proposal removes references to some now repealed Titles of the Social Security Act and adds a reference to Title XXI of the Act, State Children's Health Insurance Program (SCHIP).

**DSSM 5304 Jurisdiction**

- The proposal removes an ineffective reference to the "assignment of cases" into TANF (Temporary Assistance to Needy Families). This removal is needed because TANF is no longer a "demonstration program." Cases are no longer "assigned" into TANF.

**DSSM 5312 Responses to Hearing Requests**

- The proposal adds a description of the "presenter's" role in a fair hearing and is proposed in order to clarify the pre-hearing role of the presenter (See §5407) at a fair hearing and to assure that the §5312 hearing summary will be able to be offered as evidence at the hearing by the maker of the document.

**DSSM 5402 Hearings on Decisions**

- The proposal makes a change to a typographical error in the text.

**DSSM 5403 Availability of Documents and Records**

- The proposal changes the responding party to a request for documents for a fair hearing from the hearing officer to the "office that maintains the records." This is needed because the Division of Social Services contracts some hearing officer services. The contractors do not have physical access to the records that may be requested. The office that maintains the records can respond to a request for a record more effectively than a contractor.
- Additionally, if the office does not produce the records in a reasonable amount of time, the requestor may ask the hearing office to order the production of the records.

**DSSM 5405 Fair Hearing Procedures**

- The proposal adds the statement that "Witnesses [at a fair hearing] may be sequestered with the

approval of the hearing officer." The statement is being added to reflect the agency's current fair hearing practice.

**Revisions:****5100 Legal Base**

Public Assistance benefits are authorized under the various categorical programs established under Title 31 of the Delaware Code, under the Food Stamp Act, as amended, and under Titles ~~IV—A, XVI, XIX, and XX, and XXI~~ of the Social Security Act and under regulations, not inconsistent with these laws promulgated by the State or federal governments.

**5304 Jurisdiction**

An opportunity for a hearing will be granted to any applicant who requests a hearing because his/her claim for economic or medical assistance or food stamp assistance is denied or is not acted upon with reasonable promptness and to any recipient who is aggrieved by any action of the Division of Social Services such as actions to reduce benefits or to assign Food Stamp Program recipients to a specific employment and training component.

To be considered, a request for a hearing must be a clear expression in writing by the appellant or his/her representative to the effect that (s)he wants the opportunity to present his/her case to higher authority.

Only issues described in the notice of action sent to the appellant or issues fairly presented in the appellant's request for a fair hearing or in the Division's response in its hearing summary may be presented for the hearing officer's review at the hearing.

Appellants of actions taken in the Food Stamp Program may request a fair hearing orally, and, if so, will be informed that it is advisable to perfect the request by reducing it to writing. The staff member receiving an oral request will initiate procedures to begin the hearing process.

The freedom to make a request for a hearing will not be limited or interfered with in any way. The Division may provide assistance to appellants such as providing translators or a non-English explanation of the hearing process when required by federal regulations.

Except in the Food Stamp Program, a hearing need not be granted when either State or federal law requires automatic grant adjustments for classes of recipients, unless the reason for an individual appeal is incorrect grant computation.

~~A hearing may not be granted on the assignment of cases into DELAWARE'S TEMPORARY ASSISTANCE FOR NEEDY FAMILIES program or the exclusion of cases from DELAWARE'S TEMPORARY ASSISTANCE FOR NEEDY FAMILIES program. The worker may respond to such requests by asking the hearing officer to dismiss the~~

request when completing a hearing summary. (See §5312.)

### 5312 Responses to Hearing Requests

1) Upon receipt of a request for a hearing, either orally in the Food Stamp Program or in writing, a fair hearing summary will be prepared in response to the request. The presenter (§5407) is expected to write and sign the Hearing Summary.

2) A fair hearing summary is a document prepared by the agency stating the factual and legal reason(s) for the action under appeal.

3) The purpose of the hearing summary is to state the position of the proponent of the action in order to provide the appellant with the necessary information to prepare his/her case.

4) Preparation of hearing summary - On receipt of a request for a fair hearing, the agency shall prepare and submit a hearing summary to the Hearing Office within five (5) working days. The document must be easily read and understood (abbreviations should be avoided). Actions in the matter being appealed should be explained in concise statements and include citations to the policy upon which the action is based. The names and addresses of persons that the agency expects to call to testify will be included in the hearing summary.

5) Format of the hearing summary - The fair hearing summary shall be labeled at the top and signed and dated at the bottom. It shall contain the following:

a) Identifying information - Give the client's name, the client's address, and the DCIS identification number.

b) Client's reason for appeal - This section shows the basis of the client's appeal (rejection, reduction, closure, amount of benefits etc...)

c) Action taken - This section is used to describe the specific action taken by the agency as well as the factual basis for its decision.

d) Has assistance continued? - This section identifies whether or not the appellant's assistance has been restored because the appellant filed a request for a hearing within the timely notice period.

e) Cite policy basis - This purpose of this section is to cite the specific State rules supporting the action taken.

f) Persons expected to testify - This section lists the names and addresses (if any) of persons that the agency expects to call to testify.

If completed by DSS, the worker will submit the case to his/her supervisor. The supervisor will:

a) Provide an adequate case review;

b) Correct any errors;

c) Forward request/summary together with any documents to be admitted at the hearing to the agency or DSS hearing office.

Note: If a section is not applicable, the designation "N/A"

may be used.

As soon as the request/summary is received, it is recorded in an appeal calendar and immediately forwarded to the hearing officer. Upon review, the hearing officer will:

a) Set a prompt date for the hearing;

b) Send a notice conforming to the requirements of §5311.

c) Notify all parties, including witnesses, of the date, time, and place of the hearing.

### 5402 Hearings on Decisions

A hearings may encompass decisions concerning:

1) Eligibility for financial or medical assistance in both initial and subsequent determinations;

2) The amount of economic or medical assistance or a change in the amount of the benefits;

3) The manner or form of the benefit including restricted or protective benefits;

4) A denial of a request for restoration of food stamp benefits lost more than ninety (90) days but less than one year prior to the request;

5) A decision of an MCO or other contractor that a medical service, treatment or test is not medically or otherwise necessary.

In addition,

6) At any time within a certification period, a household may dispute its current level of food stamp benefits; and

7) Food Stamp Program households may appeal decisions concerning expedited service.

### 5403 Availability of Documents and Records

Prior to the hearing, the appellant and his/her representative will have adequate opportunity to examine all documents and records to be used by the State agency or its agent at the hearing and to examine the claimant's case records. Requests by the appellant or his/her authorized representative for records and documents between the request for a hearing and the hearing should be directed to the office that maintains the records, hearing officer. If the office does not produce the records within a reasonable period of time, the requestor may ask the hearing officer to order the production of the records. There is no charge for copies of records and documents requested for a fair hearing. Documents relating to the case will be provided to a claimant or a household provided that confidential information is protected from release.

### 5405 Fair Hearing Procedures

1) Hearing Officer's Introduction

The hearing officer will appropriately introduce the purpose of the meeting, the individuals and roles of those in attendance, and generally "set the stage" to assure the appellant of his/her right to be heard. In addition, (s)he will administer an oath to all witnesses and parties presenting testimony at the hearing. The hearing officer may, in his/her discretion, deal with any preliminary matters prior to beginning the case.

2) **Manner of Proceeding**

The hearing officer shall conduct the hearing in an informed fashion, consistent however with the procedural rights of the Department and the claimant to a courteous, fair, and fairly conducted hearing consistent with due process and the requirements of the federal regulation. Parties will be courteous to each other and the hearing officer at all times and will obey the orders and rulings of the hearing officer.

3) **Order of Presentation**

a) **Opening Remarks.**

At the discretion of the hearing officer, the Department and the claimant will each be given an opportunity to make brief opening statements. An opening statement shall advise the hearing officer of the issues a party contends are a part of the case and shall succinctly summarize how the party's case will be proven. The hearing officer may, however, terminate or limit any opening statement which is unduly lengthy, repetitive or irrelevant.

b) The State will present its case first, unless, in the discretion of the hearing officer, the burden of persuasion rests on the other party (the claimant). This shall include the presentation of all witnesses to give testimony and all documents and other evidence which is admissible to prove its case. The other party may cross-examine each witness and may raise any legal basis for exclusion of any evidence at appropriate times during the hearing. Witnesses may be sequestered with the approval of the hearing officer.

c) The other party may present any witnesses to give testimony (and may testify his/herself) and other evidence which is admissible to prove his/her/its case. However, such party need not present any evidence, but may rely upon the other party's failure to prove an essential element of his/her/its case. If evidence or testimony is presented, the other party shall have the opportunity to raise any legal basis for its exclusion and the opportunity to cross-examine witnesses at the appropriate time during the proceeding.

d) If the second party has presented any evidence, the first party may, in the discretion of the hearing officer, present rebuttal evidence.

e) **Closing Remarks.**

The parties will be given an opportunity to briefly summarize their cases in closing remarks. Such closing remarks may summarize evidence and present legal

argument for the adoption of one position against the adoption of the other. However, the hearing officer may limit or terminate unduly lengthy, repetitive, or irrelevant closing remarks.

4) **Role of Hearing Officer**

The hearing officer is in charge of running the hearing. He/she shall make all rulings on the admissibility of evidence as to how the proceedings are conducted. The hearing officer may question witnesses or direct the parties to produce evidence which he/she determines to be necessary for him/her to render a decision in the case. However, other than ensuring that the hearing is conducted fairly, the hearing officer is not permitted to assist either party in the presentation of his/her/its case.

5) **Decisions of the Hearing Officer**

Decisions of the State hearing officer will be based exclusively on evidence introduced at the hearing. The decision of the hearing officer is the final decision of the agency. Judicial review, pursuant to 31 Del. C. 520, may be taken directly from the hearing officer's decision, within thirty (30) days of the decision.

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## **DEPARTMENT OF INSURANCE**

18 DE Admin Code 1310

Statutory Authority: 18 Delaware Code,  
Sections 311, 2304(16), and 2312 (18 **Del.C.**  
§§311, 2304(16), and 2312)

### **Regulation 1310**

### **Standards For Prompt, Fair And Equitable Settlement Of Claims For Health Care Services**

#### **NOTICE OF PUBLIC HEARING**

INSURANCE COMMISSIONER DONNA LEE H. WILLIAMS hereby gives notice that a PUBLIC HEARING will be held on Wednesday May 28, 2003, at 10:00 a.m. in the Hearing Room of the Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, Delaware. The hearing is to consider amendments to Regulation 1310 (formerly Regulation 80) relating to the STANDARDS FOR PROMPT, FAIR AND EQUITABLE SETTLEMENT OF CLAIMS FOR HEALTH CARE SERVICES

The purpose for amending Regulation 1310 is to re-define certain terms and to reduce the number of days in which a health insurer may pay a clean claim from 45 to 30. Additionally, the regulation will be re-numbered to conform to the format required by the Registrar of Regulations. This

is a third hearing to consider amendments to the regulation resulting from public comment on the regulation as originally proposed.

The hearing will be conducted in accordance with the Delaware Administrative Procedures Act, 29 Del. C. Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the Hearing. Written comments must be received by the Department of Insurance no later than Monday June 2, 2003, and should be addressed to Deputy Attorney General Michael J. Rich, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904.

## Regulation 1310

### Standards For Prompt, Fair And Equitable Settlement Of Claims For Health Care Services

#### 1.0 Authority

1.1 This regulation is adopted by the Commissioner pursuant to 18 Del. C. 311, 2304(16), and 2312. It is promulgated in accordance with 29 Del. C. Chapter 101.

#### 2.0 Definitions

For the purpose of this regulation, the following definitions shall apply:

2.1 "Carrier" or "Health Insurer" shall have the same meaning applied to it by 18 Del. C. 3343(a)(1).

2.2 "Clean Claim" shall mean a claim that has no defect or impropriety (including any lack of any required substantiating documentation) or particular circumstance requiring special treatment that substantially prevents timely payments from being made on the claim.

2.3 "Health Care Provider" shall mean any entity or individual licensed, certified or otherwise permitted by law pursuant to Titles 16 or 24 of the Delaware Code to provide health care services.

2.4 "Policyholder," "Insured" or "Subscriber" shall be a person covered under a health insurance policy or a representative designated by such person and entitled to make claims on his or her behalf.

#### 3.0 Scope

3.1 This regulation shall apply to all health insurers as defined in Section 2, and shall apply to all plans or policies of health insurance or benefits delivered or issued for delivery in this State and which cover residents of this State or employees of employers located in this State and their dependents. Exempted from the provisions of this regulation are policies of automobile and workers compensation insurance, hospital income and disability income insurance, Medicare supplement and long-term care insurance.

#### 4.0 Purpose

4.1 The purpose of this regulation is to ensure that health insurers pay claims to policyholders and health care providers in a timely manner. This regulation will establish standards for both determining promptness in settling claims and determining the existence of a general business practice for failing to promptly settle such claims under 18 Del. C. 2304(16).

#### 5.0 Prompt Payment of Claims

5.1 A health insurer shall pay the benefit due under a clean claim to a policyholder or covered person, or make payment to a health care provider no later than ~~45~~ 30 calendar days after receipt of an ~~electronically~~ clean claim for services. ~~and no later than 45 calendar days after receipt of a paper filed clean claim for services.~~

5.2 A claim is not a clean claim as defined in section 2.2 if any of the following circumstances exist:

5.2.1 Where the obligation of a health insurer to pay a claim or make a payment for health care services rendered is not reasonably clear due to a good faith dispute regarding the eligibility of a person for coverage, the liability of another insurer or corporation for all or part of a claim, the amount of the claim, the benefits covered under a contract or agreement, or the manner in which services were accessed or provided.

5.2.2 Where there exists a reasonable basis supported by specific information, available for review by the Department, that such claim was submitted fraudulently.

5.2.3 For claims properly disputed or litigated and subsequently paid.

5.3 In those cases covered by section 5.2.1, a health insurer shall pay all portions of a claim meeting the definition of clean claim in accordance with section 5.1. Additionally, a health insurer shall notify the policyholder in writing within 30 days of the receipt of the claim:

5.3.1 that such carrier is not obligated to pay the claim or make the medical payment, in whole or in part, stating the specific reasons why it is not liable; or

5.3.2 that additional information is needed and is being sought to determine liability to pay the claim or make the health care payment.

5.4 Upon receipt of the information required by section 5.3.2, or upon the administrative resolution of a dispute wherein the health insurer is deemed obligated to pay the benefit due under the claim or make medical payment, a health insurer shall make payment as required by section 5.1.

#### 6.0 General Business Practice

6.1 Within a 36 month period, three instances of a health insurer's failure to pay a Claim or bill for services promptly, as defined in section 5 above, shall give rise to a rebuttable presumption that the insurer is in violation of 18

Del. C. 2304 (16)(f). In determining whether the presumption is rebutted the Commissioner may consider, among other things, whether the health insurer meets nationally recognized timeline standards for claims payments such as those applicable to the Medicare, Medicaid or Federal Employees Health Benefit Plan programs.

6.2 The 36 month time period established in section 6.1 shall be measured based upon the date the claims or bills became due. Each claim or bill, or portion of a claim or bill, pertaining to a single medical treatment or procedure provided to an individual policyholder that is processed in violation of this regulation shall constitute an "instance" as described in section 6.1.

### 7.0 Penalties

7.1 In addition to the imposition of penalties in accordance with 18 Del. C. 2312(b), the Commissioner may order the health insurer to pay to the health care provider or claimant, in full settlement of the claim or bill for health care services, the amount of the claim or bill plus interest at the maximum rate allowable to lenders under 6 Del. C. 2301(a). Such interest shall be computed from the date the claim or bill for services first became due.

### 8.0 Causes of Action

8.1 This regulation shall not create a cause of action for any person or entity, other than the Delaware Insurance Commissioner, against a health insurer or its representative based upon a violation of 18 Del. C. 2304 (16).

### 9.0 Separability

9.1 If any provision of this regulation or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of such provisions, and the application of such provision to any person or circumstance other than those as to which it is held invalid, shall not be affected.

### 10.0 Effective Date

10.1 This regulation, as amended, shall become effective on ~~July~~ August 1, 2003.

ADOPTED AND SIGNED BY THE  
COMMISSIONER \_\_\_\_\_, 2003

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**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL  
DIVISION OF AIR AND WASTE MANAGEMENT  
AIR QUALITY MANAGEMENT SECTION**

Statutory Authority: 7 Delaware Code, Chapter 60  
(7 Del.C. Ch. 60)

SAN # 2002-26

**1. Title Of The Regulations:**

"Reporting Of A Discharge Of A Pollutant Or An Air Contaminant"

**2. Brief Synopsis Of The Subject, Substance And Issues:**

The Department is planning make several minor corrections to the list of substances (Section 3 Table A) associated with the current regulation that describes the requirements for reporting the environmental release or discharge of a pollutant or air contaminant. The purpose of this proposed amendment is to change to reportable quantity for the flammable substance hydrogen, clarify flammable substance reportable quantities, and correct several technical mistakes in the associated list of substances.

**3. Possible Terms Of The Agency Action:**

None

**4. Statutory Basis Or Legal Authority To Act:**

7 Delaware Code, Chapter 60

**5. Other Regulations That May Be Affected By The Proposal:**

None

**6. Notice Of Public Comment:**

The public hearing date is scheduled for June 25. The public comment period for this proposed amendment will extend through July 4, 2003. Interested parties may submit comments in writing during this time frame to: Jay Brabson, Air Quality Management Section, 715 Grantham Lane, New Castle, DE 19720, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Wednesday, June 25, 2003 beginning at 6:00 PM in the DNREC auditorium at the Richardson and Robbins Building, 89 Kings Highway, Dover, DE.

**7. Prepared By:**

Jay Brabson (302) 323-4542 April 7, 2003

**Reporting Of A Discharge Of A Pollutant Or**

**An Air Contaminant****Section 1 - General Provisions**

1.1 The purpose of this Regulation is to describe the requirements for reporting the discharge of a pollutant or an air contaminant as mandated in 7 Del. C., Section 6028.

1.2 Information obtained through the provisions of this Regulation shall be made available for public inspection in accordance with 29 Del. C., Chapter 100 and Department of Natural Resources and Environmental Control (Department) Freedom of Information Act (FOIA) regulations except where such information is of confidential nature as defined in 7 Del. C., Section 6014.

1.3 The list of chemicals and substances subject to the reporting requirements of this Regulation and the associated Delaware Reportable Quantity (DRQ) for each chemical and substance is contained in Section 3. The Department may, after providing proper public notice and an opportunity for public hearing, add or delete chemicals or substances or change the DRQ of any chemical or substance.

1.4 The reporting requirements under this Regulation are in addition to and not in lieu of, any other discharge reporting requirement found in any other state, federal, county or local government statutes, permits, regulations or ordinances.

1.5 [Reserved]

1.6 Definitions

A. "Delaware Reportable Quantity" (DRQ) – means the reportable quantity of chemicals, substances or mixtures listed in Section 3 of this regulation notwithstanding any reporting requirements by other state, federal, county or local government statutes, regulations or ordinances. To be reportable, the DRQ is based on the total quantity discharged over a rolling 24-hour period.

B. "Discharge" - means any spilling, leaking, pumping, pouring, emitting, emptying, releasing, injecting, escaping, leaching, dumping, or disposing into the environment of any chemical or substance listed in Section 3 but excludes emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, waterborne vessel or pipeline pumping station engine. Discharge includes any environmental release.

C. "Environmental Emergency Notification and Complaint Number" – means the 24-hour DNREC telephone number(s) used for reporting the discharge of a pollutant or an air contaminant.

D. "Environmental Release" – means any spillage, leakage, emission, discharge, or delivery into the air or waters or on or into the lands of this State, of any sewage of 10,000 gallons or more, oil, industrial waste, liquid waste, hydrocarbon chemical, hazardous substance, hazardous waste, restricted chemical material, vessel discharge, air contaminant, pollutant, regulated biological substance or

other wastes reportable pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended, or this Regulation.

E. "Extremely Hazardous Substance" – means substances listed in 40 CFR Part 355 Appendices A and B as amended May 7, 1996.

F. "Heating oil" - means petroleum that is one of nine technical grades. These are: No. 1; No.2; No.4-light; No.4-heavy; No.5-light; No.5-heavy; No.6 technical grade of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels used as substitutes for one of these fuels such as kerosene or diesel when used for heating purposes. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.-

G. "Motor Fuel" - means petroleum or petroleum-based substance that is motor gasoline, aviation gasoline, jet fuel, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine.

H. "Petroleum Substance" - means oil of any kind or in any form, including but not limited to petroleum, fuel oil, heating oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Vegetable-based oils such as soybean oil are not included.

I. "Sewage" - means water-carried human or animal wastes from septic tanks, water closets, residences, buildings, industrial establishments, or other places, together with such ground water infiltration, subsurface water, and mixtures of industrial wastes or other wastes as may be present.

**Section 2 - Reporting Requirements****2.1 Applicability**

A. Unless otherwise stated in this Section, any person who causes or contributes to an environmental release or to the discharge of an air contaminant into the air or a pollutant, including petroleum substances, into surface water, groundwater or land in excess of any DRQ specified under this Regulation, shall report such discharge to the Department as soon as the person has knowledge of said environmental release or discharge while activating the appropriate emergency site plan unless circumstances exist which make such a notification impossible. A delay in notification shall not be considered to be a violation of this Regulation when the act of reporting may delay the mitigation of the discharge and/or the protection of public health and the environment.

B. Discharge in compliance with a validly issued state or federal permit(s) or in compliance with other state and federal regulations is exempt from the reporting requirements of this Regulation.

C. An owner or operator responsible for a transportation related discharge may meet the requirements of this Regulation by providing the information indicated in 2.4 to the 911 operator and, if applicable, to the responding

Department representative at the scene. For the purposes of this paragraph, a "transportation related discharge" means a discharge during transportation when the stored chemical or substance is moving under active shipping papers and has not reached the ultimate consignee.

D. This Regulation does not apply to the proper application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et. seq. as amended August 3, 1996).

E. Any discharge that is continuous and stable in quantity and rate under the definitions in 40 CFR 302.8 (b) is exempt from reporting requirements of this regulation except:

(i) Initial notifications as required by 40 CFR part 302.8 (d) and (e).

(ii) "statistically significant increase" as defined in 40 CFR 302.8(b),

(iii) notification of a "new release" as defined in 40 CFR 302.8(g) (1), or

(iv) notification of a change in the normal range of the release as required under 40 CFR 302.8(g) (2).

Telephone notification required by 40 CFR 302.8 to the State of Delaware State Emergency Response Commission (SERC) shall be fulfilled by notifying the Department. Written notification reports required by 40 CFR 302.8 and sent to the EPA regional office shall serve as written notification to the State of Delaware SERC when copied to the Department.

(Reference: 40 CFR 302.8 as promulgated on July 24, 1990).

2.2 Discharges (including petroleum substances) that are wholly contained within a building are exempt from the reporting requirements of this Regulation. Should such a wholly contained discharge be discharged outside the building at a later time for any reason, that eventual discharge, when exceeding the DRQ, shall activate these reporting requirements.

### 2.3 [Reserved]

2.4 For the purpose of this regulation, notification of any reportable incident under Sections 2.1 or 2.3 by a person to the Department can be in person to Department staff or by telephone communication to the Department's Environmental Emergency Notification and Complaint Number. The notification must contain the following information which details the facts and circumstances of the discharge to the maximum extent practicable at the time of notice:

A. Facility name and/or location of the discharge.

B. Type of incident, e.g. discharge, fire, explosion, associated with discharge and whether assistance from outside emergency responders, e.g. 911, has been requested.

C. The chemical or substance involved with the incident of discharge including the Chemical Abstract

System (CAS) number for the chemical or of the constituent chemicals when a mixture is discharged.

D. An indication of whether the chemical or chemicals are an extremely hazardous substance.

E. An estimate of the quantity of any such chemical(s) or substance(s) that was discharged into the environment.

F. The beginning time and the duration of the discharge.

G. The medium or media, e.g. soil, groundwater, surface water, air, etc., into which the discharge occurred.

H. Any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals.

I. Proper precautions to take as a result of the discharge, including evacuation.

J. The name(s) and telephone number(s) of the person(s) to be contacted for further information.

K. Such other information as the Department may require.

2.5 (A) Except for petroleum substances, sewage, or infectious waste releases, as soon as practical but no later than 30 days after a release of a DRQ of a listed substance, such person, owner or operator shall provide a written follow-up report to the Department updating the information required under section 2.4 and including the following additional information to the extent known:

#### Part I.

i. Actions taken to respond to and contain the release in the form of a chronology,

ii. Any known or anticipated acute or chronic health risks associated with the release, and

iii. Where appropriate, advice regarding medical attention necessary for exposed individuals.

#### Part II.

iv. The facts and circumstances leading to the environmental release including a detailed identification of the pathway through which the discharge to the environment occurred and potential environmental impacts,

v. Measures proposed to prevent such a discharge from occurring in the future and to remedy the deficiencies, if any, in the prevention, detection, response containment, cleanup or removal plan components,

vi. Such other information which the Department may require.

Except where Part II information is of confidential nature as defined in 7 Del. C., § 6014, all written information obtained through this subsection shall be made available to Local Emergency Planning Committees (LEPCs) and the public.

(B) The Department reserves the right to require a written follow-up report for any environmental release, regardless of the substance or quantity, if there is concern for

public health and safety or environmental welfare has been adversely affected. At the Department's discretion, the Department may require said person to file a written follow-up report, within 30 days or any shorter time as required by validly issued state or federal permits or by any pertinent regulations, setting forth all details contained in Sections 2.4 and 2.5.

The written follow-up report shall be in a format approved by the Department and submitted to the appropriate addresses for report submissions provided by the Department. The Department may establish procedures for notification and submission of written reports by computerized and electronic methods, including but not limited to, the submission of information through the internet.

### Section 3 - Chemicals, Substances and Mixtures and Associated Reportable Quantities.

3.1 The purpose of this Section is to detail those chemicals, substances and mixtures applicable to the reporting requirements of this Regulation and to identify the DRQ at which reporting of the chemical or substance release or discharge is required.

3.2 Table A attached to this Section contains all chemicals and chemical categories and DRQ's that are subject to the reporting requirements of this Regulation. Notification of the discharge of a DRQ of solid particles of antimony, arsenic, beryllium, cadmium, chromium, copper, lead, nickel, selenium, silver, thallium, zinc or any other solid substance on the DRQ list is not required if the mean diameter of the particles discharged is larger than 100 micrometers (0.004 inches).

3.3 When any incident of discharge occurs involving more than one (1) chemical or chemical category listed in this Section, the DRQ for the total discharge shall be the lowest DRQ of any constituent of that total, unless the mixture is known. In this case, the word "known" means that a determination of constituent levels is made either by direct testing or by calculation of the constituent level in light of the materials or processes used to generate the mixture. For incidents involving known mixtures of substances with a DRQ, the discharge is subject to these notification requirements only when a constituent substance of the mixture is discharged in a quantity equal to or greater than its DRQ.

3.4 In all cases, discharges of infectious waste, as defined in Title 7 Chapter 64 § 6402, of any quantity or of any type occurring outside of a medical or health care facility are subject to the notification requirements of Section 2.4 of this regulation and the written requirements of Section 2.5 (B).

3.5 In all cases, discharges of petroleum substances of any quantity or of any type are subject to these notification requirements unless the petroleum substance is contained in

such a manner as to prevent the immediate or eventual discharge or leaking into surface water or groundwater, or is confined to the location of the discharge on an impervious surface. For discharges of petroleum substances that are contained in such a manner as to prevent the immediate or eventual discharge or leaking into surface water or groundwater or are confined to the location of the discharge on an impervious surface, the following shall apply:

A. Discharges of 25 gallons or more on land of motor fuel, jet fuel, heating oil, used oil or used petroleum substances must be reported.

B. Discharges of 150 gallons or more to land of any other petroleum substance not listed above or not uniquely identified on the Section 3 list, must be reported. \_

Revised/Amended 2002

**Section 3 Table A  
Delaware List of Chemicals and Reportable Quantities in  
Pounds in Alphabetical Order**

CAS		NAME	DRQ
	DE	* Infectious waste	ALL*
	DE	* Petroleum subs., other than heating oil, motor fuel, used oil	150 gal.*
	DE	* Petroleum substances, heating oil, motor fuel, used oil	25 gal.*
	DE	*10,000 gallons sewage	10,000 gal*.
71751412	DE	Abamectin	100
83329		Acenaphthene	100
208968		Acenaphthylene	5000
30560191	DE	Acephate	100
75070		Acetaldehyde	1000
75876		Acetaldehyde, trichloro-	5000
60355		Acetamide	100
64197		Acetic acid	5000
108247		Acetic anhydride	5000
67641		Acetone	5000
75865		Acetone cyanohydrin	10
1752303		Acetone thiosemicarbazide	1000
75058		Acetonitrile	5000
98862		Acetophenone	5000
53963		2-Acetylaminofluorene	1
506967		Acetyl bromide	5000
75365		Acetyl chloride	5000
74862	DE	Acetylene	F 1000 **

# PROPOSED REGULATIONS

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591082		1-Acetyl-2-thiourea	1000
62476599	DE	Acifluorfen, sodium salt	100
107028		Acrolein	1
79061		Acrylamide	5000
79107		Acrylic acid	5000
107131		Acrylonitrile	100
814686		Acrylyl chloride	100
124049		Adipic acid	5000
111693		Adiponitrile	1000
15972608	DE	Alachlor	100
116063		Aldicarb	1
1646884		Aldicarb sulfone	1
309002		Aldrin	1
1116707	DE	Alkylaluminums	500
28057489	DE	d-trans-Allethrin	100
107119		Allylamine	50
107186		Allyl alcohol	100
107051		Allyl chloride	1000
7429905	DE	Aluminum (fume or dust)	100
1344281	DE	Aluminum oxide (fibrous forms)	100
20859738		Aluminum phosphide	100
10043013		Aluminum sulfate	5000
834128	DE	Ametryn	100
117793	DE	2-Aminoanthraquinone	10
60093	DE	4-Aminoazobenzene	10
92671		4-Aminobiphenyl	1
82280	DE	1-Amino-2-methylantraquinone	10
54626		Aminopterin	500
504245		4-Aminopyridine	1000
78535		Amiton	500
3734972		Amiton oxalate	100
33089611	DE	Amitraz	100
61825		Amitrole	10
7664417	DE	Ammonia	50
6484522	DE	Ammonium nitrate	500
7790989	DE	Ammonium perchlorate	500
13446101	DE	Ammonium permanganate	500
631618		Ammonium acetate	5000
1863634		Ammonium benzoate	5000
1066337		Ammonium bicarbonate	5000
7789095		Ammonium bichromate	10
1341497		Ammonium bifluoride	100

10192300		Ammonium bisulfite	5000
1111780		Ammonium carbamate	5000
506876		Ammonium carbonate	5000
12125029		Ammonium chloride	5000
7788989		Ammonium chromate	10
3012655		Ammonium citrate, dibasic	5000
13826830		Ammonium fluoborate	5000
12125018		Ammonium fluoride	100
1336216		Ammonium hydroxide	1000
14258492		Ammonium oxalate	5000
6009707		Ammonium oxalate	5000
5972736		Ammonium oxalate	5000
131748		Ammonium picrate	10
16919190		Ammonium silicofluoride	1000
7773060		Ammonium sulfamate	5000
12135761		Ammonium sulfide	100
10196040		Ammonium sulfite	5000
3164292		Ammonium tartrate	5000
14307438		Ammonium tartrate	5000
1762954		Ammonium thiocyanate	5000
7783188		Ammonium thiosulfate	5000
7803556		Ammonium vanadate	1000
300629		Amphetamine	1000
628637		Amyl acetate	5000
123922		iso-Amyl acetate	5000
626380		sec-Amyl acetate	5000
625161		tert-Amyl acetate	5000
101053	DE	Anilazine	100
62533		Aniline	5000
88051		Aniline, 2,4,6-trimethyl-	500
90040		o-Anisidine	100
104949	DE	p-Anisidine	100
134292	DE	o-Anisidine hydrochloride	10
120127		Anthracene	5000
7440360		Antimony	5000
7647189		Antimony pentachloride	1000
7783702		Antimony pentafluoride	500
28300745		Antimony potassium tartrate	100
7789619		Antimony tribromide	1000
10025919		Antimony trichloride	1000

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7783564		Antimony trifluoride	1000
1309644		Antimony trioxide	1000
1397940		Antimycin A	1000
86884		Antu	100
12674112		Aroclor 1016	1
11104282		Aroclor 1221	1
11141165		Aroclor 1232	1
53469219		Aroclor 1242	1
12672296		Aroclor 1248	1
11097691		Aroclor 1254	1
11096825		Aroclor 1260	1
7440382		Arsenic	1
7778394		Arsenic acid	1
1327522		Arsenic acid	1
1303328		Arsenic disulfide	1
1303282		Arsenic pentoxide	1
1327533		Arsenic trioxide	1
1303339		Arsenic trisulfide	1
7784341		Arsenous trichloride	1
7784421		Arsine	10
1332214		Asbestos (friable)	1
1912249	DE	Atrazine	10
115026		Azaserine	1
2642719		Azinphos-ethyl	100
319857		beta-BHC	1
319868		delta-BHC	1
101279	DE	Barban	1
7440393		Barium	100
542621		Barium cyanide	10
22781233		Bendiocarb	1
22961826		Bendiocarb phenol	1
1861401		Benfluralin	100
17804352		Benomyl	1
225514		Benz[c]acridine	100
98873		Benzal chloride	5000
55210		Benzamide	100
56553		Benz[a]anthracene	10
98168		Benzenamine, 3-(trifluoromethyl)-	500
71432		Benzene	10
100141		Benzene, 1-(chloromethyl)-4-nitro-	500

510156		Benzeneacetic acid, 4-chloro-.alpha.-(4-chlorophenyl)-.alpha.-hydroxy-, ethyl ester	10
98055		Benzeneearsonic acid	10
122098		Benzeneethanamine, alpha, alpha-dimethyl-	5000
98099		Benzenesulfonyl chloride	100
92875		Benzidine	1
3615212		Benzimidazole, 4,5-dichloro-2-(trifluoromethyl)-	500
205823	DE	Benzo(j)fluoranthene	10
207089		Benzo(k)fluoranthene	5000
205992		Benzo(b)fluoranthene	1
65850		Benzoic acid	5000
98077		Benzoic trichloride	10
205992		Benzo[l]fluoranthene	1
100470		Benzonitrile	5000
189559		Benzo(rst)pentaphene	10
191242		Benzo[ghi]perylene	5000
218019		Benzo(a)phenanthrene	100
50328		Benzo[a]pyrene	1
98884		Benzoyl chloride	1000
94360	DE	Benzoyl peroxide	100
100447		Benzyl chloride	100
140294		Benzyl cyanide	500
7440417		Beryllium	10
7787475		Beryllium chloride	1
7787497		Beryllium fluoride	1
7787555		Beryllium nitrate	1
13597994		Beryllium nitrate	1
191242		Benzo(g,h,i)perylene	5000
15271417		Bicyclo[2.2.1]heptane-2-carbonitrile, 5-chloro-6-(((methylamino)carbonyl)oxy)imino)-(1-alpha,2-beta,4-alpha,5-alpha,6E))-	500
82657043	DE	Bifenthrin	100
92524		Biphenyl	100
111911		Bis(2-chloroethoxy) methane	1000
111444		Bis(2-chloroethyl) ether	10
542881		Bis(chloromethyl) ether	10
534076		Bis(chloromethyl) ketone	10
108601		Bis(2-chloro-1-methylethyl)ether	1000
97745	DE	Bis(dimethylthiocarbamoyl) sulfide	1

# PROPOSED REGULATIONS

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38661722	DE	1,3-Bis(methylisocyanate)cyclohexane	100
10347543	DE	1,4-Bis(methylisocyanate)cyclohexane	100
56359	DE	Bis(tributyltin) oxide	100
4044659		Bitoscanate	500
10294345		Boron trichloride	500
7637072	DE	Boron trifluoride	10
353424		Boron trifluoride compound with methyl ether (1:1)	1000
314409	DE	Bromacil	100
53404196	DE	Bromacil, lithium salt	100
28772567		Bromadiolone	100
7726956	DE	Bromine	100
13863417		Bromine chloride	100
7789382		Bromine pentafluoride	100
598312		Bromoacetone	1000
35691657	DE	1-Bromo-1-(bromomethyl)-1,3-propanedicarbonitrile	100
353593	DE	Bromochlorodifluoromethane	100
75252		Bromoform	100
74839		Bromomethane	1000
101553		4-Bromophenyl phenyl ether	100
106967		3-Bromopropyne	500
7787715	DE	Bromotrifluoride	500
598732	DE	Bromotrifluoroethylene	F 1000**
75638		Bromotrifluoromethane	100
1689845	DE	Bromoxynil	100
1689992	DE	Bromoxynil octanoate	100
52517	DE	Bronopol	100
357573		Brucine	100
106990		1,3-Butadiene	10
106978	DE	Butane	F 1000**
123739		2-Butenal, (e)-	100
25167673	DE	Butene	F 1000**
590181	DE	2-Butene-cis	F 1000**
624646	DE	2-Butene-trans	F 1000**
106989	DE	1-Butene	F 1000**
107017	DE	2-Butene	F 1000**
75912	DE	tert-Butyl hydroperoxide	500
614459	DE	tert-Butyl perbenzoate	500
107711	DE	tert-Butyl peroxyacetate	500
927071	DE	tert-Butyl peroxy-pivalate	1000
123864		Butyl acetate	5000
110190		iso-Butyl acetate	5000

105464		sec-Butyl acetate	5000
540885		tert-Butyl acetate	5000
141322	DE	Butyl acrylate	100
71363		n-Butyl alcohol	5000
78922	DE	sec-Butyl alcohol	100
75650	DE	tert-Butyl alcohol	100
109739		Butylamine	1000
78819		iso-Butylamine	1000
513495		sec-Butylamine	1000
13952846		sec-Butylamine	1000
75649		tert-Butylamine	1000
2008415	DE	Butylate	1
85687		Butyl benzyl phthalate	100
106887	DE	1,2-Butylene oxide	100
123728	DE	Butyraldehyde	100
107926		Butyric acid	5000
79312		iso-Butyric acid	5000
75605		Cacodylic acid	1
7440439		Cadmium	10
543908		Cadmium acetate	10
7789426		Cadmium bromide	10
10108642		Cadmium chloride	10
1306190		Cadmium oxide	100
2223930		Cadmium stearate	1000
7778441		Calcium arsenate	1
52740166		Calcium arsenite	1
75207		Calcium carbide	10
13765190		Calcium chromate	10
156627		Calcium cyanamide	1000
592018		Calcium cyanide	10
26264062		Calcium dodecylbenzenesulfonate	1000
7778543		Calcium hypochlorite	10
56257		Cantharidin	100
105602	DE	Caprolactam	5000
133062		Captan	10
51832		Carbachol chloride	500
26419738		Carbamic acid, methyl-, O-(((2,4-dimethyl-1,3-dithiolan-2-yl)methylene)amino)-	1
136301	DE	Carbamodithioic acid, dibutyl-, sodium salt	1
148185	DE	Carbamodithioic acid, diethyl-, sodium salt	1

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1929777	DE	Carbamothioic acid, dipropyl-, S-propyl ester	1
5288809		Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester	1
63252		Carbaryl	100
10605217		Carbendazim	1
1563662		Carbofuran	10
1563388	DE	Carbofuran phenol	1
75150		Carbon disulfide	100
353584		Carbon fluoride	100
630080	DE	Carbon monoxide	F 1000**
353504		Carbonic difluoride	1000
109615		Carbonochloridic acid, propylester	500
56235		Carbon tetrachloride	10
463581		Carbonyl sulfide	100
786196		Carbophenothion	500
55285148		Carbosulfan	1
5234684	DE	Carboxin	100
120809		Catechol	100
9004700	DE	Cellulose nitrate	500
2439012	DE	Chinomethionat	100
133904		Chloramben	100
305033		Chlorambucil	10
57749		Chlordane	1
115286	DE	Chlorendic acid	10
470906		Chlorfenvinfos	500
90982324		Chlorimuron ethyl	100
0	DE	Chlorinated Benzenes	5000
0	DE	Chlorinated Naphthalene	5000
0	DE	Chlorinated Phenol	100
7782505		Chlorine	10
10049044		Chlorine dioxide	100
7791211	DE	Chlorine monoxide	F 100**
13637633		Chlorine pentafluoride	1
7790912		Chlorine trifluoride	100
24934916		Chlormephos	500
999815		Chlormequat chloride	100
494031		Chlornaphazine	100
97007	DE	1-Chloro-2,4-Dinitrobenzene	500
59507		p-Chloro-m-cresol	5000
107200		Chloroacetaldehyde	1000
79118		Chloroacetic acid	100

532274		2-Chloroacetophenone	100
0	DE	Chloroalkyl ethers	1
4080313	DE	1-(3-Chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride	100
106478		p-Chloroaniline	1000
108907		Chlorobenzene	100
124481		Chlorodibromomethane	100
96106	DE	Chlorodiethylaluminum	500
75683	DE	1-Chloro-1,1-difluoroethane	100
75456	DE	Chlorodifluoromethane	100
75003		Chloroethane	1000
107073		Chloroethanol	500
627112		Chloroethyl chloroformate	1000
110758		2-Chloroethyl vinyl ether	1000
67663		Chloroform	10
74873		Chloromethane	100
107302		Chloromethyl methyl ether	10
563473	DE	3-Chloro-2-methyl-1-propene	10
91587		2-Chloronaphthalene	5000
3691358		Chlorophacinone	100
95578		2-Chlorophenol	100
104121	DE	p-Chlorophenyl isocyanate	100
7005723		4-Chlorophenyl phenyl ether	5000
76062		Chloropicrin	10
126998	DE	Chloroprene	100
542767		3-Chloropropionitrile	1000
590216	DE	1-Chloropropylene	F 1000**
557982	DE	2-Chloropropylene	F 2000**
7790945		Chlorosulfonic acid	1000
63938103	DE	Chlorotetrafluoroethane	100
354256	DE	1-Chloro-1,1,2,2-tetrafluoroethane	100
2837890	DE	2-Chloro-1,1,1,2-tetrafluoroethane	100
1897456	DE	Chlorothonil	100
95692	DE	p-Chloro-o-toluidine	10
3165933		4-Chloro-o-toluidine, hydrochloride	100
75887	DE	2-Chloro-1,1,1-trifluoroethane	100
75729		Chlorotrifluoromethane	100
460355	DE	3-Chloro-1,1,1-trifluoropropane	100
1982474		Chloroxuron	500
2921882		Chlorpyrifos	1
5598130	DE	Chlorpyrifos methyl	100
64902723	DE	Chlorsulfuron	100
1066304		Chromic acetate	1000

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11115745		Chromic acid	10
7738945		Chromic acid	10
10025737		Chromic chloride	1
10101538		Chromic sulfate	1000
7440473		Chromium	5000
10049055		Chromous chloride	1000
4680788	DE	C.I. Acid Green 3	100
6459945	DE	C.I. Acid Red 114	10
569642	DE	C.I. Basic Green 4	100
989388	DE	C.I. Basic Red 1	100
1937377	DE	C.I. Direct Black 38	10
28407376	DE	C.I. Direct Blue 218	100
2602462	DE	C.I. Direct Blue 6	10
16071866	DE	C.I. Direct Brown 95	10
2832408	DE	C.I. Disperse Yellow 3	100
3761533	DE	C.I. Food Red 5	10
81889	DE	C.I. Food Red 15	100
3118976	DE	C.I. Solvent Orange 7	100
97563	DE	C.I. Solvent Yellow 3	100
842079	DE	C.I. Solvent Yellow 14	100
492808	DE	C.I. Solvent Yellow 34	100
128665	DE	C.I. Vat Yellow 4	100
7440484	DE	Cobalt	10
10210681		Cobalt carbonyl	10
62207765		Cobalt, ((2,2'-(1,2-ethanediybis(nitrilomethylidene))bis(6-fluorophenylato))(2-)-N,N',O,O')-	100
7789437		Cobaltous bromide	1000
544183		Cobaltous formate	1000
14017415		Cobaltous sulfamate	1000
0		Coke Oven Emmissions	1
64868		Colchicine	10
7440508		Copper	5000
544923		Copper cyanide	10
137291	DE	Copper, bis(dimethylcarbomodithioato-S,S')-	1
56724		Coumaphos	10
5836293		Coumatetralyl	500
8001589		Creosote	1
120718	DE	p-Cresidine	10
108394		m-Cresol	100
95487		o-Cresol	100
106445		p-Cresol	1000
1319773		Cresol (isomers and mixture)	100

535897		Crimidine	100
4170303		Crotonaldehyde	100
98828		Cumene	5000
80159		Cumene hydroperoxide	10
135206	DE	Cupferron	10
142712		Cupric acetate	100
12002038		Cupric acetoarsenite	1
7447394		Cupric chloride	10
3251238		Cupric nitrate	100
5893663		Cupric oxalate	100
7758987		Cupric sulfate	10
10380297		Cupric sulfate, ammoniated	100
815827		Cupric tartrate	100
21725462	DE	Cyanazine	100
57125		Cyanides (soluble salts and complexes) not otherwise specified	10
460195		Cyanogen	100
506683		Cyanogen bromide	1000
506774		Cyanogen chloride	10
506785		Cyanogen iodide	1000
2636262		Cyanophos	1000
675149		Cyanuric fluoride	1
1134232	DE	Cycloate	1
110827		Cyclohexane	1000
2556367	DE	1,4-Cyclohexane diisocyanate	100
108930	DE	Cyclohexanol	100
108941		Cyclohexanone	5000
66819		Cycloheximide	100
108918		Cyclohexylamine	10000
131895		2-Cyclohexyl-4,6-dinitrophenol	100
50180		Cyclophosphamide	10
75194	DE	Cyclopropane	F 1000**
68359375	DE	Cyfluthrin	100
68085858	DE	Cyhalothrin	100
94757		2,4-D Acid	100
1929733		2,4-D Esters	100
1928387		2,4-D Esters	100
25168267		2,4-D Esters	100
53467111		2,4-D Esters	100
1928616		2,4-D Esters	100
2971382		2,4-D Esters	100
94804		2,4-D Esters	100

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94791		2,4-D Esters	100
1320189		2,4-D Esters	100
94111		2,4-D Ester	100
20830813		Daunomycin	10
533744	DE	Dazomet	1
53404607	DE	Dazomet, sodium salt	100
94826	DE	2,4-DB	100
72548		DDD	1
72559		DDE	1
3547044		DDE	5000
50293		DDT	1
17702419		Decaborane(14)	500
1163195	DE	Decabromodiphenyl oxide	100
8065483		Demeton	500
919868		Demeton-S-methyl	500
13684565		Desmedipham	100
1928434	DE	2,4-D 2-ethylhexyl ester	10
53404378	DE	2,4-D 2-ethyl-4-methylpentyl ester	10
110225	DE	Diacetyl peroxide (55% solution)	500
10311849		Dialifor	100
2303164		Diallate	100
615054	DE	2,4-Diaminoanisole	10
39156417	DE	2,4-Diaminoanisole sulfate	10
101804		4,4'-Diaminodiphenyl ether	10
496720		Diaminotoluene	10
823405		Diaminotoluene	10
95807		2,4-Diaminotoluene	10
25376458		Diaminotoluene (mixed isomers)	10
333415		Diazinon	1
334883		Diazomethane	100
226368	DE	Dibenz(a,h)acridine	10
224420		Dibenz(a,j)acridine	10
53703		Dibenz[a,h]anthracene	1
194592	DE	7H-Dibenzo(c,g)carbazole	10
5385751	DE	Dibenzo(a,e)fluoranthene	100
132649		Dibenzofuran	100
192654	DE	Dibenzo(a,e)pyrene	10
189640		Dibenzo(a,h)pyrene	10
191300	DE	Dibenzo(a,l)pyrene	10
94360	DE	Dibenzoyl peroxide	500
19287457		Diborane	10
96128		1,2-Dibromo-3-chloropropane	1

10222012	DE	2,2-Dibromo-3-nitropropionamide	100
124732	DE	Dibromotetrafluoroethane	100
110054		tert-Dibutyl peroxide	500
84742		Dibutyl phthalate	10
1918009		Dicamba	1000
1194656		Dichlobenil	100
117806		Dichlone	1
99309	DE	Dichloran	100
7572294		Dichloroacetylene	10
95501		1,2-Dichlorobenzene	100
541731		1,3-Dichlorobenzene	100
106467		1,4-Dichlorobenzene	100
25321226		Dichlorobenzene (mixed isomers)	100
91941		3,3'-Dichlorobenzidine	1
612839	DE	3,3'-Dichlorobenzidine dihydrochloride	10
64969342	DE	3,3'-Dichlorobenzidine sulfate	10
75274		Dichlorobromomethane	5000
110576		trans-1,4-Dichlorobutene	500
764410		1,4-Dichloro-2-butene	1
1649087	DE	1,2-Dichloro-1,1-difluoroethane	100
75718		Dichlorodifluoromethane	5000
156605		1,2-Dichloroethylene	1000
540590	DE	1,2-Dichloroethylene	100
1717006	DE	1,1-Dichloro-1-fluoroethane	100
75434		Dichlorofluoromethane	100
75092		Dichloromethane	1000
149746		Dichloromethylphenylsilane	1000
12756492 5	DE	Dichloropentafluoropropane	100
12890321 9	DE	2,2-Dichloro-1,1,1,3,3-pentafluoropropane	100
422480	DE	2,3-Dichloro-1,1,1,2,3-pentafluoropropane	100
422446	DE	1,2-Dichloro-1,1,2,3,3-pentafluoropropane	100
422560	DE	3,3-Dichloro-1,1,1,2,2-pentafluoropropane	100
507551	DE	1,3-Dichloro-1,1,2,2,3-pentafluoropropane	100
13474889	DE	1,1-Dichloro-1,2,2,3,3-pentafluoropropane	100
431867	DE	1,2-Dichloro-1,1,3,3,3-pentafluoropropane	100
13601379 1	DE	1,3-Dichloro-1,1,2,3,3-pentafluoropropane	100

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11151256 2	DE	1,1-Dichloro-1,2,3,3,3-pentafluoropropane	100
97234	DE	Dichlorophene	100
120832		2,4-Dichlorophenol	100
87650		2,6-Dichlorophenol	100
696286		Dichlorophenylarsine	1
26638197		Dichloropropane	1000
8003198		Dichloropropane - Dichloropropene (mixture)	100
78999		1,1-Dichloropropane	1000
78875		1,2-Dichloropropane	1000
142289		1,3-Dichloropropane	5000
26952238		Dichloropropene	100
10061026	DE	trans-1,3-Dichloropropene	10
78886		2,3-Dichloropropene	100
75990		2,2-Dichloropropionic acid	5000
542756		1,3-Dichloropropylene	100
4109960	DE	Dichlorosilane	100
76142	DE	Dichlorotetrafluoroethane	100
90454185	DE	Dichloro-1,1,2-trifluoroethane	100
34077877	DE	Dichlorotrifluoroethane	100
812044	DE	1,1-Dichloro-1,2,2-trifluoroethane	100
354234	DE	1,2-Dichloro-1,1,2-trifluoroethane	100
306832	DE	2,2-Dichloro-1,1,1-trifluoroethane	100
62737		Dichlorvos	10
51338273	DE	Diclofop methyl	100
115322		Dicofol	10
141662		Dicrotophos	100
77736		Dicyclopentadiene	100
60571		Dieldrin	1
1464535		Diepoxybutane	10
111422		Diethanolamine	100
38727558	DE	Diethyl ethyl	100
109897		Diethylamine	100
91667		N,N-Diethylaniline	1000
692422		Diethylarsine	1
814493		Diethyl chlorophosphate	500
13419037 7	DE	Diethyldiisocyanatobenzene	100
117817		Di(2-ethylhexyl) phthalate	100
3288582		O,O-Diethyl S-methyl dithiophosphate	5000
311455		Diethyl-p-nitrophenyl phosphate	100

84662		Diethyl phthalate	1000
56531		Diethylstilbestrol	1
64675		Diethyl sulfate	10
557200	DE	Diethylzinc	1000
35367385	DE	Diflubenzuron	100
75376	DE	Difluoroethane	F 1000**
71636		Digitoxin	100
2238075		Diglycidyl ether	1000
101906		Diglycidyl resorcinol ether	10
20830755		Digoxin	10
94586		Dihydrosafrole	10
4128738	DE	4,4'-Diisocyanatodiphenyl ether	100
75790873	DE	2,4'-Diisocyanatodiphenyl sulfide	100
105646	DE	Diisopropyl peroxydicarbonate	500
55914		Diisopropylfluorophosphate	100
105748	DE	Diluaroyl peroxide	500
115264		Dimefox	500
55290647	DE	Dimethipin	100
60515		Dimethoate	10
119904		3,3'-Dimethoxybenzidine	100
20325400	DE	3,3'-Dimethoxybenzidine dihydrochloride	10
91930	DE	3,3'-Dimethoxybenzidine-4,4'-diisocyanate	100
11198409 9	DE	3,3'-Dimethoxybenzidine hydrochloride	10
75183		Dimethyl sulfide	1
124403		Dimethylamine	1000
2300665	DE	Dimethylamine dicamba	100
60117		4-Dimethylaminoazobenzene	10
121697		N,N-Dimethylaniline	100
57976		7,12-Dimethylbenz[a]anthracene	1
119937		3,3'-Dimethylbenzidine	10
612828	DE	3,3'-Dimethylbenzidine dihydrochloride	10
41766750	DE	3,3'-Dimethylbenzidine dihydrofluoride	10
79447		Dimethylcarbanyl chloride	1
2524030		Dimethyl chlorothiophosphate	500
75785		Dimethyldichlorosilane	500
91974	DE	3,3'-Dimethyl-4,4'-diphenylene diisocyanate	100
139253	DE	3,3'-Dimethyldiphenylmethane-4,4'-diisocyanate	100
68122		N,N-Dimethylformamide	100

# PROPOSED REGULATIONS

57147		1,1-Dimethyl hydrazine	10
105679		2,4-Dimethylphenol	100
576261		2,6-Dimethylphenol	100
99989		Dimethyl-p-phenylenediamine	10
131113		Dimethyl phthalate	5000
463821	DE	2,2-Dimethylpropane	F 1000**
77781		Dimethyl sulfate	100
644644		Dimetilan	1
602017	DE	2,3-Dinitroaniline	500
97029	DE	2,4-Dinitroaniline	500
25154545		Dinitrobenzene (mixed isomers)	100
99650		m-Dinitrobenzene	100
528290		o-Dinitrobenzene	100
100254		p-Dinitrobenzene	100
88857		Dinitrobutyl phenol	1000
534521		4,6-Dinitro-o-cresol	10
25550587		Dinitrophenol	10
51285		2,4-Dinitrophenol	10
329715		2,5-Dinitrophenol	10
573568		2,6-Dinitrophenol	10
619158	DE	2,5-Dinitrotoluene	500
618858	DE	3,5-Dinitrotoluene	500
25321146		Dinitrotoluene (mixed isomers)	10
121142		2,4-Dinitrotoluene	10
606202		2,6-Dinitrotoluene	100
610399		3,4-Dinitrotoluene	10
39300453	DE	Dinocap	100
1420071		Dinoterb	500
117840		n-Dioctylphthalate	5000
123911		1,4-Dioxane	100
78342		Dioxathion	500
82666		Diphacinone	10
957517	DE	Diphenamid	100
122394	DE	Diphenylamine	100
122667		1,2-Diphenylhydrazine	10
152169		Diphosphoramidate, octamethyl-	100
2164070	DE	Dipotassium endothall	100
142847		Dipropylamine	5000
136458	DE	Dipropyl isocinchomerate	100
85007		Diquat	1000
2764729		Diquat	1000

138932	DE	Disodium cyanodithioimidocarbonate	100
97778	DE	Disulfiram	1
298044		Disulfoton	1
514738		Dithiazanine iodide	500
541537		2,4-Dithiobiuret	100
330541		Diuron	100
27176870		Dodecylbenzenesulfonic acid	1000
2439103	DE	Dodine	100
120365	DE	2,4-DP	10
2702729	DE	2,4-D sodium salt	10
316427		Emetine, dihydrochloride	1
959988		alpha - Endosulfan	1
33213659		beta - Endosulfan	1
115297		Endosulfan	1
1031078		Endosulfan sulfate	1
145733		Endothall	1000
2778043		Endothion	500
72208		Endrin	1
7421934		Endrin aldehyde	1
106898		Epichlorohydrin	100
51434		Epinephrine	1000
2104645		EPN	100
50146		Ergocalciferol	1000
379793		Ergotamine tartrate	500
74840	DE	Ethane	F 1000**
1622328		Ethanesulfonyl chloride, 2-chloro-	500
76131	DE	Ethane, 1,1,2-trichloro-1,2,2,-trifluoro-	100
30558431		Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester	1
10140871		Ethanol, 1,2-dichloro-, acetate	1000
5952261		Ethanol, 2,2'-oxybis-, dicarbamate	1
563122		Ethion	10
13194484		Ethoprop	1000
110805		2-Ethoxyethanol	1000
19393670		Ethyl methylketone peroxide	500
141786		Ethyl acetate	5000
107006	DE	Ethyl acetylene	F 1000**
140885		Ethyl acrylate	1000
100414		Ethylbenzene	1000
538078		Ethylbis(2-chloroethyl)amine	500

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541413	DE	Ethyl chloroformate	100
759944	DE	Ethyl dipropylthiocarbamate	1
74851	DE	Ethylene	<u>F 1000**</u>
111546		Ethylenebisdithiocarbamic acid, salts & esters	5000
107153		Ethylenediamine	5000
60004		Ethylenediamine-tetraacetic acid (EDTA)	5000
106934		Ethylene dibromide	1
107062		Ethylene dichloride	100
371620		Ethylene fluorohydrin	1
107211		Ethylene glycol	5000
151564		Ethyleneimine	1
75218		Ethylene oxide	10
96457		Ethylenethiourea	10
60297		Ethyl ether	100
75343		Ethylidene Dichloride	1000
75081	DE	Ethyl mercaptan	<u>F 1000**</u>
97632		Ethyl methacrylate	1000
62500		Ethyl methanesulfonate	1
109955		Ethyl nitrite	100
542905		Ethyl thiocyanate	10000
14324551	DE	Ethyl Ziram	1
52857		Famphur	1000
22224926		Fenamiphos	10
60168889	DE	Fenarimol	100
13356086	DE	Fenbutatin oxide	100
122145		Fenitrothion	1
66441234	DE	Fenoxaprop ethyl	100
72490018	DE	Fenoxycarb	100
39515418	DE	Fenpropathrin	100
115902		Fensulfothion	500
55389		Fenthion	100
51630581	DE	Fenvalerate	100
14484641	DE	Ferbam	1
1185575		Ferric ammonium citrate	1000
55488874		Ferric ammonium oxalate	1000
2944674		Ferric ammonium oxalate	1000
7705080		Ferric chloride	1000
7783508		Ferric fluoride	100
10421484		Ferric nitrate	1000
10028225		Ferric sulfate	1000
10045893		Ferrous ammonium sulfate	1000

7758943		Ferrous chloride	100
7782630		Ferrous sulfate	1000
7720787		Ferrous sulfate	1000
69806504	DE	Fluazifop butyl	100
4301502		Fluenetil	100
2164172	DE	Fluometuron	100
206440		Fluoranthene	100
86737		Fluorene	5000
7782414		Fluorine	10
640197		Fluoroacetamide	100
144490		Fluoroacetic acid	10
359068		Fluoroacetyl chloride	10
51218		Fluorouracil	500
7789211	DE	Fluosulfonic acid	25
69409945	DE	Fluvalinate	100
133073	DE	Folpet	100
72178020	DE	Fomesafen	100
944229		Fonofos	500
50000		Formaldehyde	100
107164		Formaldehyde cyanohydrin	1000
23422539		Formetanate hydrochloride	1
64186		Formic acid	5000
2540821		Formothion	100
17702577		Formparanate	1
21548323		Fosthietan	500
3878191		Fuberidazole	100
110178		Fumaric acid	5000
110009		Furan	100
109999		Furan, tetrahydro-	1000
98011		Furfural	5000
13450903		Gallium trichloride	500
765344		Glycidylaldehyde	10
70257		Guanidine, N-methyl-N'-nitro-N-nitroso-	10
86500		Guthion	1
76448		Heptachlor	1
1024573		Heptachlor epoxide	1
118741		Hexachlorobenzene	10
87683		Hexachloro-1,3-butadiene	1
319846		alpha-Hexachlorocyclohexane	10
77474		Hexachlorocyclopentadiene	10

## PROPOSED REGULATIONS

67721		Hexachloroethane	100
1335871	DE	Hexachloronaphthalene	100
70304		Hexachlorophene	100
1888717		Hexachloropropene	1000
757584		Hexaethyl tetraphosphate	100
684162		Hexafluoroacetone	100
4835114		Hexamethylenediamine, N,N'-dibutyl-	500
822060	DE	Hexamethylene-1,6-diisocyanate	100
680319		Hexamethylphosphoramide	1
110543		Hexane	5000
51235042	DE	Hexazinone	100
67485294		Hydramethylnon	100
302012		Hydrazine	1
1615801		Hydrazine, 1,2-diethyl-	10
540738		Hydrazine, 1,2-dimethyl-	1
10034932	DE	Hydrazine sulfate	10
1333740	DE	Hydrogen	F 6000**
10035106		Hydrogen bromide	1000
7647010		Hydrogen chloride; Hydrochloric acid	5000
74908		Hydrogen cyanide	10
7664393		Hydrogen fluoride; hydrofluoric acid	100
7722841		Hydrogen peroxide	100
7783075		Hydrogen selenide	10
7783064		Hydrogen sulfide	100
123319		Hydroquinone	100
7803498	DE	Hydroxylamine	500
35554440	DE	Imazalil	100
193395		Indeno(1,2,3-cd)pyrene	100
55406536	DE	3-Iodo-2-propynyl butylcarbamate	1
13463406		Iron, pentacarbonyl-	10
297789		Isobenzan	100
75285	DE	Isobutane	F 1000**
78831		Isobutyl alcohol	5000
78842		Isobutyraldehyde	100
78820		Isobutyronitrile	1000
102363		Isocyanic acid, 3,4-dichlorophenyl ester	500
465736		Isodrin	1
25311711	DE	Isofenphos	100
78784	DE	Isopentane	F 1000**
78591		Isophorone	5000
4098719		Isophorone diisocyanate	100

78795		Isoprene	100
42504461		Isopropanolamine dodecylbenzene sulfonate	1000
<del>75351</del>		<del>Isopropyl amine</del>	<del>1000</del>
625558		Isopropyl formate	100
75310	DE	Isopropylamine	F 1000**
75296	DE	Isopropyl chloride	F 1000**
108236		Isopropyl chloroformate	1000
80057	DE	4,4'-Isopropylidenediphenol	100
119380		Isopropylmethylpyrazolyl dimethylcarbamate	1
120581		Isosafrole	100
143500		Kepone	1
463514		Ketene	10
77501634	DE	Lactofen	100
78977		Lactonitrile	1000
303344		Lasiocarpine	10
7439921		Lead	10
301042		Lead acetate	10
7784409		Lead arsenate	1
7645252		Lead arsenate	1
10102484		Lead arsenate	1
7758954		Lead chloride	10
13814965		Lead fluoborate	10
7783462		Lead fluoride	10
10101630		Lead iodide	10
10099748		Lead nitrate	10
7446277		Lead phosphate	10
1072351		Lead stearate	10
56189094		Lead stearate	10
52652592		Lead stearate	10
7428480		Lead stearate	10
1335326		Lead subacetate	10
15739807		Lead sulfate	10
7446142		Lead sulfate	10
1314870		Lead sulfide	10
592870		Lead thiocyanate	10
21609905		Leptophos	500
541253		Lewisite	10
58899		Lindane	1
330552	DE	Linuron	100
554132	DE	Lithium carbonate	100

# PROPOSED REGULATIONS

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14307358		Lithium chromate	10
7580678		Lithium hydride	100
121755		Malathion	100
110167		Maleic acid	5000
108316		Maleic anhydride	5000
123331		Maleic hydrazide	5000
109773		Malononitrile	1000
12427382	DE	Maneb	100
7439965	DE	Manganese	100
15339363		Manganese, bis(dimethylcarbamodithioato-S,S')-	1
12108133		Manganese, tricarbonyl methylcyclopentadienyl	100
93652	DE	Mecoprop	10
148823		Melphalan	1
950107		Mephosfolan	500
149304	DE	2-Mercaptobenzothiazole	100
2032657		Mercaptodimethur	10
1600277		Mercuric acetate	500
7487947		Mercuric chloride	500
592041		Mercuric cyanide	1
10045940		Mercuric nitrate	10
21908532		Mercuric oxide	500
7783359		Mercuric sulfate	10
592858		Mercuric thiocyanate	10
7782867		Mercurous nitrate	10
10415755		Mercurous nitrate	10
7439976		Mercury	1
628864		Mercury fulminate	10
150505	DE	Merphos	100
10476956		Methacrolein diacetate	1000
760930		Methacrylic anhydride	500
126987		Methacrylonitrile	1000
920467		Methacryloyl chloride	10
30674807		Methacryloyloxyethyl isocyanate	10
10265926		Methamidophos	100
137428	DE	Metham sodium	1
74828	DE	Methane	F 1000**
558258		Methanesulfonyl fluoride	1000
67561		Methanol	5000
91805		Methapyrilene	5000
20354261	DE	Methazole	100

950378		Methodathion	500
16752775		Methomyl	100
94746	DE	Methoxone	10
3653483	DE	Methoxone sodium salt	10
72435		Methoxychlor	1
109864	DE	2-Methoxyethanol	100
151382		Methoxyethylmercuric acetate	500
75221		Methyl chloroformate	1
624920		Methyl disulfide	1
453189		Methyl fluoroacetate	1
421205		Methyl fluorosulfate	1
96333	DE	Methyl acrylate	100
563462	DE	2-Methyl-1-butene	F 1000**
563451	DE	3-Methyl-1-butene	F 1000**
80637		Methyl 2-chloroacrylate	500
79221		Methyl chlorocarbonate	1000
56495		3-Methylcholanthrene	10
3697243	DE	5-Methylchrysene	10
75790840	DE	4-Methyldiphenylmethane-3,4-diisocyanate	100
101144		4,4'-Methylenebis(2-chloroaniline)	10
101611	DE	4,4'-Methylenebis(N,N-dimethyl)benzenamine	10
5124301	DE	1,1'-Methylene bis(4-isocyanatocyclohexane)	100
101688		Methylenebis(phenylisocyanate)	5000
74953		Methylene bromide	1000
101779		4,4'-Methylenedianiline	10
115106	DE	Methyl ether	F 1000**
78933		Methyl ethyl ketone	5000
1338234		Methyl ethyl ketone peroxide	10
107313	DE	Methyl formate	F 1000**
60344		Methyl hydrazine	10
74884		Methyl iodide	100
108101		Methyl isobutyl ketone	5000
624839		Methyl isocyanate	10
556616		Methyl isothiocyanate	500
74931		Methyl mercaptan	100
502396		Methylmercuric dicyanamide	500
80626		Methyl methacrylate	1000
924425		N-Methylolacrylamide	100
298000		Methyl parathion	100
3735237		Methyl phenkapton	500

## PROPOSED REGULATIONS

676971		Methyl phosphonic dichloride	100
115117	DE	2-Methylpropene	<u>F 1000**</u>
109068		2-Methylpyridine	5000
872504	DE	N-Methyl-2-pyrrolidone	100
1634044	DE	Methyl tert-butyl ether (MTBE)	<del>4000</del> <u>30</u>
556649		Methyl thiocyanate	1000
56042		Methylthiouracil	10
75796	DE	Methyltrichlorosilane	<del>500</del> <u>50</u>
78944		Methyl vinyl ketone	1
9006422	DE	Metiram	100
1129415		Metolcarb	1
21087649	DE	Metribuzin	100
7786347		Mevinphos	10
315184		Mexacarbate	1000
90948	DE	Michler's ketone	10
50077		Mitomycin C	10
2212671	DE	Molinate	1
1313275	DE	Molybdenum trioxide	100
76153	DE	Monochloropentafluoroethane	100
6923224		Monocrotophos	10
75047	DE	Monoethylamine	100
74895		Monomethylamine	100
150685	DE	Monuron	100
2763964		Muscimol	1000
505602		Mustard gas	500
88671890	DE	Myclobutanil	100
142596	DE	Nabam	100
300765		Naled	10
91203		Naphthalene	100
3173726	DE	1,5-Naphthalene diisocyanate	100
1338245		Naphthenic acid	100
130154		1,4-Naphthoquinone	5000
134327		alpha-Naphthylamine	100
91598		2-Naphthylamine	10
7440020		Nickel	100
15699180		Nickel ammonium sulfate	100
13463393		Nickel carbonyl	10
7718549		Nickel chloride	100
37211055		Nickel chloride	100
0	DE	Nickel Compounds/Nickel Coated Catalysts	200
557197		Nickel cyanide	10

12054487		Nickel hydroxide	10
14216752		Nickel nitrate	100
7786814		Nickel sulfate	100
54115		Nicotine	100
54115		Nicotine, and salts	100
65305		Nicotine sulfate	100
1929824	DE	Nitrapyrin	100
7697372		Nitric acid	1000
10102439		Nitric oxide	10
139139	DE	Nitrioltriacetic acid	10
90092	DE	m-Nitroaniline	500
88744	DE	o-Nitroaniline	500
100016		p-Nitroaniline	5000
99592	DE	5-Nitro-o-anisidine	100
98953		Nitrobenzene	1000
92933		4-Nitrobiphenyl	10
1122607		Nitrocyclohexane	500
79243		Nitroethane	500
1836755	DE	Nitrofen	10
10102440		Nitrogen dioxide	10
51752		Nitrogen mustard	10
10102439		Nitrogen oxide	10
10544726		Nitrogen tetraoxide	10
55630		Nitroglycerin	10
75525	DE	Nitromethane	500
25154556		Nitrophenol (mixed isomers)	100
554847		m-Nitrophenol	100
88755		2-Nitrophenol	100
100027		4-Nitrophenol	100
79469		2-Nitropropane	10
5522430	DE	1-Nitropyrene	10
924163		N-Nitrosodi-n-butylamine	10
1116547		N-Nitrosodiethanolamine	1
55185		N-Nitrosodiethylamine	1
62759		N-Nitrosodimethylamine	10
86306		N-Nitrosodiphenylamine	100
156105	DE	p-Nitrosodiphenylamine	100
621647		N-Nitrosodi-n-propylamine	10
759739		N-Nitroso-N-ethylurea	1
684935		N-Nitroso-N-methylurea	1
615532		N-Nitroso-N-methylurethane	1

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1483

4549400		N-Nitrosomethylvinylamine	10
59892		N-Nitrosomorpholine	1
16543558	DE	N-Nitrosonoronicotine	10
100754		N-Nitrosopiperidine	10
930552		N-Nitrosopyrrolidine	1
1321126		Nitrotoluene	1000
99081		m-Nitrotoluene	1000
88722		o-Nitrotoluene	1000
99990		p-Nitrotoluene	1000
99558		5-Nitro-o-toluidine	100
991424		Norbormide	100
27314132	DE	Norflurazon	100
2234131	DE	Octachloronaphthalene	100
29082744	DE	Octachlorostyrene	1
8014957		Oleum (fuming sulfuric acid)	1000
0		Organorhodium Complex (PMN-82-147)	10
19044883	DE	Oryzalin	100
20816120		Osmium tetroxide	1000
630604		Ouabain	100
23135220		Oxamyl	1
78717		Oxetane, 3,3-bis(chloromethyl)-	500
301122	DE	Oxydemeton methyl	100
19666309	DE	Oxydiazon	100
2497076		Oxydisulfoton	500
42874033	DE	Oxyfluorfen	100
7783417		Oxygen difluoride	1
10028156		Ozone	1
30525894		Paraformaldehyde	1000
123637		Paraldehyde	1000
1910425		Paraquat dichloride	10
2074502		Paraquat methosulfate	10
56382		Parathion	10
1114712	DE	Pebulate	1
40487421	DE	Pendimethalin	1
19624227		Pentaborane	1
608935		Pentachlorobenzene	1
608935		Pentachlorobenzene	10
76017		Pentachloroethane	10
87865		Pentachlorophenol	10
2570265		Pentadecylamine	100
504609		1,3-Pentadiene	100

109660	DE	Pentane	F 1000**
109671	DE	1-Pentene	F 1000**
646048	DE	2-Pentene, (E)-	F 1000**
627203	DE	2-Pentene, (Z)-	F 1000**
57330	DE	Pentobarbital sodium	100
79210		Peracetic acid	100
7601903	DE	Perchloric acid	1000
594423		Perchloromethyl mercaptan	100
7616946		Perchloryl fluoride	100
52645531	DE	Permethrin	100
62442		Phenacetin	100
85018		Phenanthrene	5000
108952		Phenol	1000
64006		Phenol, 3-(1-methylethyl)-, methylcarbamate	1
4418660		Phenol, 2,2'-thiobis[4-chloro-6-methyl-	100
26002802	DE	Phenothrin	100
58366		Phenoxarsine, 10,10'-oxydi-	500
95545	DE	1,2-Phenylenediamine	100
108452		1,3-Phenylenediamine	100
106503		p-Phenylenediamine	5000
615281	DE	1,2-Phenylenediamine dihydrochloride	100
624180	DE	1,4-Phenylenediamine dihydrochloride	100
123615	DE	1,3-Phenylene diisocyanate	100
104494	DE	1,4-Phenylene diisocyanate	100
59881		Phenylhydrazine hydrochloride	1000
62384		Phenylmercuric acetate	100
90437	DE	2-Phenylphenol	100
2097190		Phenylsilatrane	100
103855		Phenylthiourea	100
57410	DE	Phenytoin	10
298022		Phorate	10
4104147		Phosacetim	100
947024		Phosfolan	100
75445		Phosgene	10
732116		Phosmet	10
13171216		Phosphamidon	100
7803512		Phosphine	100
2703131		Phosphonothioic acid, methyl-, O-ethyl O-(4-(methylthio)phenyl) ester	500

## PROPOSED REGULATIONS

50782699		Phosphonothioic acid, methyl-, S-(2-(bis(1-methylethyl)amino)ethyl) O-ethyl ester	100
2665307		Phosphonothioic acid, methyl-, O-(4-nitrophenyl) O-phenyl ester	500
7664382		Phosphoric acid	5000
3254635		Phosphoric acid, dimethyl 4-(methylthio) phenyl ester	500
2587908		Phosphorothioic acid, O,O-dimethyl-5-(2-(methylthio)ethyl)ester	500
7723140		Phosphorus	1
10025873		Phosphorus oxychloride	1000
10026138		Phosphorus pentachloride	500
1314563		Phosphorus pentoxide	1
7719122		Phosphorus trichloride	1000
85449		Phthalic anhydride	5000
57476		Physostigmine	1
57647		Physostigmine, salicylate (1:1)	1
1918021	DE	Picloram	100
88891	DE	Picric acid	100
124878		Picrotoxin	500
110894		Piperidine	1000
120547	DE	Piperidine, 1,1'-(tetrathiodicarbonothioyl)-bis-	1
51036	DE	Piperonyl butoxide	100
23505411		Pirimifos-ethyl	1000
29232937	DE	Pirimiphos methyl	100
1336363		Polychlorinated biphenyls	1
9016879	DE	Polymeric diphenylmethane diisocyanate	100
7784410		Potassium arsenate	1
10124502		Potassium arsenite	1
7778509		Potassium bichromate	10
7758012	DE	Potassium bromate	10
7789006		Potassium chromate	10
151508		Potassium cyanide	10
128030		Potassium dimethyldithiocarbamate	1
1310583		Potassium hydroxide	1000
51026289	DE	Potassium N-hydroxymethyl-N-methyldithiocarbamate	1
137417	DE	Potassium N-methyldithiocarbamate	1
7722647		Potassium permanganate	100
506616		Potassium silver cyanide	1
41198087	DE	Profenofos	100
2631370		Promecarb	1

7287196	DE	Prometryn	100
23950585		Pronamide	5000
1918167	DE	Propachlor	100
463490	DE	Propadiene	F 1000**
74986	DE	Propane	F 1000**
107120		Propanenitrile	10
1120714		Propane sultone	10
709988	DE	Propanil	100
2312358		Propargite	10
107197		Propargyl alcohol	1000
106967		Propargyl bromide	1
31218834	DE	Propetamphos	100
122429		Propham	1
60207901	DE	Propiconazole	100
57578		beta-Propiolactone	10
123386		Propionaldehyde	1000
79094		Propionic acid	5000
123626		Propionic anhydride	5000
70699		Propiophenone, 4'-amino	100
114261		Propoxur	100
627134	DE	m-Propyl nitrate	500
107108		n-Propylamine	5000
115071	DE	Propylene	F 1000**
75569		Propylene oxide	100
75558		Propyleneimine	1
74997	DE	Propyne	F 1000**
2275185		Prothoate	100
129000		Pyrene	5000
121299		Pyrethrins	1
121211		Pyrethrins	1
8003347		Pyrethrins	1
110861		Pyridine	1000
140761		Pyridine, 2-methyl-5-vinyl-	500
1124330		Pyridine, 4-nitro-, 1-oxide	500
53558251		Pyriminil	100
91225		Quinoline	5000
106514		Quinone	10
82688		Quintozene	100
76578148	DE	Quizalofop-ethyl	100
50555		Reserpine	5000
10453868	DE	Resmethrin	100
108463		Resorcinol	5000

# PROPOSED REGULATIONS

1485

81072		Saccharin and salts	100
94597		Safrole	100
14167181		Salcomine	500
107448		Sarin	1
7783008		Selenious acid	10
12039520		Selenious acid, dithallium(1+) salt	1000
7782492		Selenium	100
7783791		Selenium hexafluoride	10
7446084		Selenium oxide	10
7791233		Selenium oxychloride	500
7488564		Selenium sulfide	10
144343	DE	Selenium, tetrakis(dimethyldithiocarbamate)	1
630104		Selenourea	1000
563417		Semicarbazide hydrochloride	1000
74051802	DE	Sethoxydim	100
7803625	DE	Silane	F 1000**
3037727		Silane, (4-aminobutyl)diethoxymethyl-	1000
7440224		Silver	1000
506649		Silver cyanide	1
7761888		Silver nitrate	1
122349	DE	Simazine	100
7440235		Sodium	10
7631892		Sodium arsenate	1
7784465		Sodium arsenite	1
26628228		Sodium azide (Na(N3))	1000
10588019		Sodium bichromate	10
1333831		Sodium bifluoride	100
7631905		Sodium bisulfite	5000
124652		Sodium cacodylate	100
7775113		Sodium chromate	10
143339		Sodium cyanide	10
1982690	DE	Sodium dicamba	100
128041	DE	Sodium dimethyldithiocarbamate	1
25155300		Sodium dodecylbenzenesulfonate	1000
7681494		Sodium fluoride	1000
62748		Sodium fluoroacetate	10
16721805		Sodium hydrosulfide	5000
1310732		Sodium hydroxide	1000
10022705		Sodium hypochlorite	100
7681529		Sodium hypochlorite	100

124414		Sodium methylate	1000
7632000		Sodium nitrite	100
131522		Sodium pentachlorophenate	100
132274	DE	Sodium o-phenylphenoxide	10
7558794		Sodium phosphate, dibasic	5000
10140655		Sodium phosphate, dibasic	5000
10039324		Sodium phosphate, dibasic	5000
7785844		Sodium phosphate, tribasic	5000
10124568		Sodium phosphate, tribasic	5000
7601549		Sodium phosphate, tribasic	5000
10361894		Sodium phosphate, tribasic	5000
7758294		Sodium phosphate, tribasic	5000
10101890		Sodium phosphate, tribasic	5000
10028247		Sodium Phosphate, dibasic	5000
13410010		Sodium selenate	100
10102188		Sodium selenite	100
7782823		Sodium selenite	100
10102202		Sodium tellurite	500
900958		Stannane, acetoxyltriphenyl-	500
7803523		Stibine	10
18883664		Streptozotocin	1
7789062		Strontium chromate	10
57249		Strychnine	10
57249		Strychnine, and salts	10
60413		Strychnine, sulfate	10
100425		Styrene	1000
96093		Styrene oxide	100
95067	DE	Sulfallate	1
3689245		Sulfotep	100
3569571		Sulfoxide, 3-chloropropyl octyl	500
7446095		Sulfur dioxide	<del>400</del> 500
7664939		Sulfuric acid	1000
12771083		Sulfur monochloride	1000
5714227		Sulfur pentafluoride	10
1314803		Sulfur phosphide	100
7783600		Sulfur tetrafluoride	10
7446119	DE	Sulfur trioxide	20
2699798	DE	Sulfuryl fluoride	100
35400432	DE	Sulprofos	100
93765		2,4,5-T acid	1000
3813147		2,4,5-T amines	5000

## PROPOSED REGULATIONS

6369966		2,4,5-T amines	5000
6369977		2,4,5-T amines	5000
2008460		2,4,5-T amines	5000
1319728		2,4,5-T amines	5000
61792072		2,4,5-T esters	1000
25168154		2,4,5-T esters	1000
93798		2,4,5-T esters	1000
1928478		2,4,5-T esters	1000
2545597		2,4,5-T esters	1000
13560991		2,4,5-T salts	1000
77816		Tabun	10
34014181	DE	Tebuthiuron	100
13494809		Tellurium	1
7783804		Tellurium hexafluoride	10
3383968	DE	Temephos	100
5902512	DE	Terbacil	100
13071799		Terbufos	100
79947	DE	Tetrabromobisphenol A	1
1634022	DE	Tetrabutylthiuram disulfide	1
95943		1,2,4,5-Tetrachlorobenzene & Isomers	5000
1746016		2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD)	1
630206		1,1,1,2-Tetrachloroethane	100
79345		1,1,2,2-Tetrachloroethane	100
127184		Tetrachloroethylene	100
354143	DE	1,1,2,2-Tetrachloro-1-fluoroethane	100
354110	DE	1,1,1,2-Tetrachloro-2-fluoroethane	100
58902		2,3,4,6-Tetrachlorophenol	10
961115	DE	Tetrachlorvinphos	100
64755	DE	Tetracycline hydrochloride	100
78002		Tetraethyl lead	10
107493		Tetraethyl pyrophosphate	10
597648		Tetraethyltin	100
116143	DE	Tetrafluoroethylene	F 1000**
10086472		Tetrafluoro hydrazine	100
7696120	DE	Tetramethrin	100
75741		Tetramethyllead	100
75763	DE	Tetramethylsilane	F 1000**
509148		Tetranitromethane	10
1314325		Thallic oxide	100
7440280		Thallium	1000
563688		Thallium(I) acetate	100

10102451		Thallium(I) nitrate	100
10031591		Thallium sulfate	100
7446186		Thallium(I) sulfate	100
6533739		Thallos carbonate	100
7791120		Thallos chloride	100
2757188		Thallos malonate	100
148798	DE	Thiabendazole	100
62555		Thioacetamide	10
28249776	DE	Thiobencarb	100
2231574		Thiocarbazine	1000
139651	DE	4,4'-Thiodianiline	10
59669260		Thiodicarb	1
39196184		Thiofanox	100
297972		Thionazin	100
7719097		Thionyl chloride	10
23564069	DE	Thiophanate ethyl	100
23564058		Thiophanate-methyl	1
108985		Thiophenol	100
79196		Thiosemicarbazide	100
62566		Thiourea	10
5344821		Thiourea, (2-chlorophenyl)-	100
614788		Thiourea, (2-methylphenyl)-	500
137268		Thiram	10
1314201	DE	Thorium dioxide	100
7550450		Titanium tetrachloride	<del>400</del> 1000
108883		Toluene	1000
584849		Toluene-2,4-diisocyanate	100
91087		Toluene-2,6-diisocyanate	100
26471625		Toluene diisocyanate (unspecified isomer)	100
95534		o-Toluidine	100
106490		p-Toluidine	100
636215		o-Toluidine hydrochloride	100
8001352		Toxaphene	1
32534955		2,4,5-TP esters	100
93721		2,4,5-TP acid	100
43121433	DE	Triadimefon	100
2303175		Triallate	1
1031476		Triamiphos	500
68768		Triaziquone	100
24017478		Triazofos	500

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101200480	DE	Tribenuron methyl	100
1983104	DE	Tributyltin fluoride	100
2155706	DE	Tributyltin methacrylate	100
78488		S,S,S-Tributyltrithiophosphate	100
52686		Trichlorfon	100
76028		Trichloroacetyl chloride	500
120821		1,2,4-Trichlorobenzene & Isomers	100
1558254		Trichloro(chloromethyl)silane	10
27137855		Trichloro(dichlorophenyl)silane	500
71556		1,1,1-Trichloroethane	1000
79005		1,1,2-Trichloroethane	100
79016		Trichloroethylene	100
115219		Trichloroethylsilane	500
75694		Trichlorofluoromethane	5000
327980		Trichloronate	500
25167822		Trichlorophenol	10
15950660		2,3,4-Trichlorophenol	10
933788		2,3,5-Trichlorophenol	10
933755		2,3,6-Trichlorophenol	10
95954		2,4,5-Trichlorophenol	10
88062		2,4,6-Trichlorophenol	10
609198		3,4,5-Trichlorophenol	10
98135		Trichlorophenylsilane	500
96184	DE	1,2,3-Trichloropropane	10
10025782	DE	Trichlorosilane	F 1000**
57213691	DE	Triclopny triethylammonium salt	100
27323417		Triethanolamine dodecylbenzene sulfonate	1000
998301		Triethoxysilane	500
121448		Triethylamine	5000
79389	DE	Trifluorochloroethylene	F 1000**
1582098		Trifluralin	10
26644462		Triforine	100
2487903		Trimethoxysilane	10
75503		Trimethylamine	100
95636	DE	1,2,4-Trimethylbenzene	100
75774		Trimethylchlorosilane	1000
16938220	DE	2,2,4-Trimethylhexamethylene diisocyanate	100
15646965	DE	2,4,4-Trimethylhexamethylene diisocyanate	100
824113		Trimethylpropane phosphite	100

540841		2,2,4-Trimethylpentane	1000
2655154	DE	2,3,5-Trimethylphenyl methylcarbamate	100
1066451		Trimethyltin chloride	500
	DE	1,2,4-Trinitrobenzene	500
99354		1,3,5-Trinitrobenzene	10
602293	DE	2,3,4-Trinitrotoluene	500
	DE	2,3,5-Trinitrotoluene	500
	DE	2,3,6-Trinitrotoluene	500
610253	DE	2,4,5-Trinitrotoluene	500
118967	DE	2,4,6-Trinitrotoluene	500
	DE	3,4,5-Trinitrotoluene	500
639587		Triphenyltin chloride	500
76879	DE	Triphenyltin hydroxide	1000
555771		Tris(2-chloroethyl)amine	100
126727		<del>Ethanamine, 1,1-dimethyl-2-phenyl</del> Tris (2,3dibromopropyl) phosphate	10
72571		Trypan blue	10
66751		Uracil mustard	10
541093		Uranyl acetate	100
10102064		Uranyl nitrate	100
36478769		Uranyl nitrate	100
51796		Urethane	100
2001958		Valinomycin	1000
7440622	DE	Vanadium (except when contained in an alloy)	100
1314621		Vanadium pentoxide	1000
27774136		Vanadyl sulfate	1000
50471448	DE	Vinclozolin	100
108054		Vinyl acetate	5000
689974	DE	Vinyl acetylene	F 1000**
593602		Vinyl bromide	100
75014		Vinyl chloride	1
109922	DE	Vinyl ethyl ether	F 1000**
75025	DE	Vinyl fluoride	F 1000**
75354		Vinylidene chloride	100
75387	DE	Vinylidene fluoride	F 1000**
107255	DE	Vinyl methyl ether	F 1000**
81812		Warfarin	100
81812		Warfarin, & salts, conc.>0.3%	100
129066		Warfarin sodium	100
108383		m-Xylene	100
95476		o-Xylene	100

# PROPOSED REGULATIONS

106423		p-Xylene	100
1330207		Xylene	100
1300716		Xylenol	1000
87627	DE	2,6-Xylidine	10
28347139		Xylylene dichloride	100
7440666		Zinc	1000
557346		Zinc acetate	1000
14639975		Zinc ammonium chloride	1000
14639986		Zinc ammonium chloride	1000
52628258		Zinc ammonium chloride	1000
1332076		Zinc borate	1000
7699458		Zinc bromide	1000
3486359		Zinc carbonate	1000
7646857		Zinc chloride	1000
557211		Zinc cyanide	10
58270089		Zinc, dichloro(4,4-dimethyl-5(((methylamino)carbonyloxy)imino) Pentanenitrile)-, (T-4)-	100
7783495		Zinc fluoride	1000
557415		Zinc formate	1000
7779864		Zinc hydrosulfite	1000
7779886		Zinc nitrate	1000
127822		Zinc phenolsulfonate	5000
1314847		Zinc phosphide	100
16871719		Zinc silicofluoride	5000
7733020		Zinc sulfate	1000
12122677	DE	Zineb	100
137304		Ziram	1
13746899		Zirconium nitrate	5000
16923958		Zirconium potassium fluoride	1000
14644612		Zirconium sulfate	5000
10026116		Zirconium tetrachloride	5000

This consolidated chemical list includes chemicals subject to reporting requirements under the Emergency Planning and Community Right-to-Know Act (EPCRA), also known as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). Chemicals listed under 112(r) of the Clean Air Act (CAA), Section 311 of the Clean Water Act of 1980, State of Delaware's Accidental Release Prevention Regulation, and EPCRA Section 313 are included with Delaware Reportable Quantities (DRQs). Some substances are listed as commonly known synonyms

more than once or with different CAS numbers. For other synonyms and CAS numbers search the EPA ~~Chemical Substance~~ Registry System (~~CRS~~) (SRS) under chemical names or CAS numbers. The EPA ~~CSR~~ (SRS) search page can be found on the internet at: [http://oaspub.epa.gov/srs/SEARCH\\$.STARTUP](http://oaspub.epa.gov/srs/SEARCH$.STARTUP)

Note: Substances with no DE must also be reported to the National Reporting Center (NRC) under federal reporting requirements with reportable quantities equal to the DRQ. The column with designation 'DE' means that the substance DRQ does not agree with the federal reportable quantity under CERCLA or EPCRA requirements to report to the (NRC). Check the EPA Lists of Lists or the NRC internet webpage to determine if and what reportable release quantity must be reported to the NRC independently of the State of Delaware Reporting requirements.

\* No mandatory written report is required under Section 2.5 of the 6028 Reporting Regulation.

\*\* F = Flammable substances Delaware reportable quantities apply for short term releases (immediate to one hour).

**Section 3 Table A**  
**RCRA Waste Streams and Unlisted Hazardous Wastes**

RCRA Codes	NAME	DRQ
D001	Unlisted hazardous wastes characteristic of ignitability	100
D002	Unlisted hazardous wastes characteristic of corrosivity	100
D003	Unlisted hazardous wastes characteristic of reactivity	100
D004	Arsenic	1
D005	Barium	1000
D006	Cadmium	10
D007	Chromium	10
D008	Lead	10
D009	Mercury	1
D010	Selenium	10
D011	Silver	1
D012	Endrin	1
D013	Lindane	1
D014	Methoxychlor	1
D015	Toxaphene	1

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D016	2,4-D	100
D017	2,4,5-TP	100
D018	Benzene	10
D019	Carbon tetrachloride	10
D020	Chlordane	1
D021	Chlorobenzene	100
D022	Chloroform	10
D023	o-Cresol	100
D024	m-Cresol	100
D025	p-Cresol	100
D026	Cresol	100
D027	1,4-Dichlorobenzene	100
D028	1,2-Dichloroethane	100
D029	1,1-Dichloroethylene	100
D030	2,4-Dinitrotoluene	10
D031	Heptachlor (and epoxide)	1
D032	Hexachlorobenzene	10
D033	Hexachlorobutadiene	1
D034	Hexachloroethane	100
D035	Methyl ethyl ketone	5000
D036	Nitrobenzene	1000
D037	Pentachlorophenol	10
D038	Pyridine	1000
D039	Tetrachloroethylene	100
D040	Trichloroethylene	100
D041	2,4,5-Trichlorophenol	10
D042	2,4,6-Trichlorophenol	10
D043	Vinyl chloride	1
F001	Spent halogenated solvents used in degreasing	10
F001a	(a) Tetrachloroethylene (CAS No. 127-18-4, RCRA Waste No. U210)	100
F001b	(b) Trichloroethylene (CAS No. 79-01-6, RCRA Waste No. U228)	100

F001c	(c) Methylene chloride (CAS No. 75-09-2, RCRA Waste No. U080)	1000
F001d	(d) 1,1,1-Trichloroethane (CAS No. 71-55-6, RCRA Waste No. U226)	1000
F001e	(e) Carbon tetrachloride (CAS No. 56-23-5, RCRA Waste No. U211)	10
F001f	(f) Chlorinated fluorocarbons	5000
F002	Spent halogenated solvents	10
F002a	(a) Tetrachloroethylene (CAS No. 127-18-4, RCRA Waste No. U210)	100
F002b	(b) Methylene chloride (CAS No. 75-09-2, RCRA Waste No. U080)	1000
F002c	(c) Trichloroethylene (CAS No. 79-01-6, RCRA Waste No. U228)	100
F002d	(d) 1,1,1-Trichloroethane (CAS No. 71-55-6, RCRA Waste No. U226)	1000
F002e	(e) Chlorobenzene (CAS No. 108-90-7, RCRA Waste No. U037)	100
F002f	(f) 1,1,2-Trichloro-1,2,2-trifluoroethane (CAS No. 76-13-1)	5000
F002g	(g) o-Dichlorobenzene (CAS No. 95-50-1, RCRA Waste No. U070)	100
F002h	(h) Trichlorofluoromethane (CAS No. 75-69-4, RCRA Waste No. U121)	5000
F002i	(i) 1,1,2-Trichloroethane (CAS No. 79-00-5, RCRA Waste No. U227)	100
F003	Spent non-halogenated solvents and still bottoms from recovery:	100
F003a	(a) Xylene (CAS No. 1330-20-7)	1000
F003b	(b) Acetone (CAS No. 67-64-12)	5000
F003c	(c) Ethyl acetate (CAS No. 141-78-6)	5000
F003d	(d) Ethylbenzene (CAS No. 100-41-4)	1000
F003e	(e) Ethyl ether (CAS No. 60-29-7)	100
F003f	(f) Methyl isobutyl ketone (CAS No. 108-10-1,)	5000
F003g	(g) n-Butyl alcohol (CAS No. 71-36-3)	5000
F003h	(h) Cyclohexanone (CAS No. 108-94-1)	5000
F003i	(i) Methanol (CAS No. 67-56-1, RCRA Waste No. U154)	5000
F004	Spent non-halogenated solvents and still bottoms from recovery:	100
F004a	(a) Cresols/cresylic acid (CAS No. 1319-77-3, RCRA Waste No. U052)	100
F004b	(b) Nitrobenzene (CAS No. 98-95-3, RCRA Waste No. U169)	1000
F005	Spent non-halogenated solvents and still bottoms from recovery:	100

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F005a	(a) Toluene (CAS No. 108-88-3, RCRA Waste No. U220)	1000
F005b	(b) Methyl ethyl ketone (CAS No. 78-93-3, RCRA Waste No. U159)	5000
F005c	(c) Carbon disulfide (CAS No. 75-15-0, RCRA Waste No. P022)	100
F005d	(d) Isobutanol (CAS No. 78-83-1, RCRA Waste No. U140)	5000
F005e	(e) Pyridine (CAS No. 110-86-1, RCRA Waste No. U196)	1000
F006	Wastewater treatment sludges from electroplating operations (w/some exceptions)	10
F007	Spent cyanide plating bath solns. from electroplating	10
F008	Plating bath residues from electroplating where cyanides are used	10
F009	Spent stripping/cleaning bath solns. from electroplating where cyanides are used	10
F010	Quenching bath residues from metal heat treating where cyanides are used	10
F011	Spent cyanide soln. from salt bath pot cleaning from metal heat treating	10
F012	Quenching wastewater sludges from metal heat treating where cyanides are used	10
F019	Wastewater treatment sludges from chemical conversion aluminum coating	10
F020	Wastes from prod. or use of tri/tetrachlorophenol or derivative intermediates	1
F021	Wastes from prod. or use of pentachlorophenol or intermediates for derivatives	1
F022	Wastes from use of tetra/penta/hexachlorobenzenes under alkaline conditions	1
F023	Wastes from mat. prod. on equip. previously used for tri/tetrachlorophenol	1
F024	Wastes from production of chlorinated aliphatic hydrocarbons (C1-C5)	1
F025	Lights ends, filters from prod. of chlorinated aliphatic hydrocarbons (C1-C5)	1
F026	Waste from equipment previously used to prod. tetra/penta/hexachlorobenzenes	1
F027	Discarded formulations containing tri/tetra/pentachlorophenols or derivatives	1
F028	Residues from incineration of soil contaminated w/ F020,F021,F022,F023,F026,F027	1
F032	Wastewaters, process residuals from wood preserving using chlorophenolic solns.	1
F034	Wastewaters, process residuals from wood preserving using creosote formulations	1

F035	Wastewaters, process residuals from wood preserving using arsenic or chromium	1
F037	Petroleum refinery primary oil/water/solids separation sludge	1
F038	Petroleum refinery secondary (emulsified) oil/water/solids separation sludge	1
K001	Wastewater treatment sludge from creosote/pentachlorophenol wood preserving	1
K002	Wastewater treatment sludge from prod. of chrome yellow and orange pigments	10
K003	Wastewater treatment sludge from prod. of molybdate orange pigments	10
K004	Wastewater treatment sludge from prod. of zinc yellow pigments	10
K005	Wastewater treatment sludge from prod. of chrome green pigments	10
K006	Wastewater treatment sludge from prod. of chrome oxide green pigments	10
K007	Wastewater treatment sludge from prod. of iron blue pigments	10
K008	Oven residue from prod. of chrome oxide green pigments	10
K009	Dist. bottoms from prod. of acetaldehyde from ethylene	10
K010	Dist. side cuts from prod. of acetaldehyde from ethylene	10
K011	Bottom stream from wastewater stripper in acrylonitrile prod.	10
K013	Bottom stream from acetonitrile column in acrylonitrile prod.	10
K014	Bottoms from acetonitrile purification column in acrylonitrile prod.	5000
K015	Still bottoms from the dist. of benzyl chloride	10
K016	Heavy ends or dist. residues from prod. of carbon tetrachloride	1
K017	Heavy ends from the purification column in epichlorohydrin prod.	10
K018	Heavy ends from the fractionation column in ethyl chloride prod.	1
K019	Heavy ends from the dist. of ethylene dichloride during its prod.	1
K020	Heavy ends from the dist. of vinyl chloride during prod. of the monomer	1
K021	Aqueous spent antimony catalyst waste from fluoromethanes prod.	10
K022	Dist. bottom tars from prod. of phenol/acetone from cumene	1
K023	Dist. light ends from prod. of phthalic anhydride from naphthalene	5000
K024	Dist. bottoms from prod. of phthalic anhydride from naphthalene	5000

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K025	Dist. bottoms from prod. of nitrobenzene by nitration of benzene	10
K026	Stripping still tails from the prod. of methyl ethyl pyridines	1000
K027	Centrifuge/dist. residues from toluene diisocyanate prod.	10
K028	Spent catalyst from hydrochlorinator reactor in prod. of 1,1,1-trichloroethane	1
K029	Waste from product steam stripper in prod. of 1,1,1-trichloroethane	1
K030	Column bottoms/heavy ends from prod. of trichloroethylene and perchloroethylene	1
K031	By-product salts generated in the prod. of MSMA and cacodylic acid	1
K032	Wastewater treatment sludge from the prod. of chlordane	10
K033	Wastewater/scrubwater from chlorination of cyclopentadiene in chlordane prod.	10
K034	Filter solids from filtration of hexachlorocyclopentadiene in chlordane prod.	10
K035	Wastewater treatment sludges from the prod. of creosote	1
K036	Still bottoms from toluene reclamation distillation in disulfoton prod.	1
K037	Wastewater treatment sludges from the prod. of disulfoton	1
K038	Wastewater from the washing and stripping of phorate production	10
K039	Filter cake from filtration of diethylphosphorodithioic acid in phorate prod.	10
K040	Wastewater treatment sludge from the prod. of phorate	10
K041	Wastewater treatment sludge from the prod. of toxaphene	1
K042	Heavy ends/residues from dist. of tetrachlorobenzene in 2,4,5-T prod.	10
K043	2,6-Dichlorophenol waste from the prod. of 2,4-D	10
K044	Wastewater treatment sludge from manuf. and processing of explosives	10
K045	Spent carbon from treatment of wastewater containing explosives	10
K046	Wastewater sludge from manuf.,formulating,loading of lead-based initiating compd	10
K047	Pink/red water from TNT operations	10
K048	Dissolved air flotation (DAF) float from the petroleum refining industry	10
K049	Slop oil emulsion solids from the petroleum refining industry	10

K050	Heat exchanger bundle cleaning sludge from petroleum refining industry	10
K051	API separator sludge from the petroleum refining industry	10
K052	Tank bottoms (leaded) from the petroleum refining industry	10
K060	Ammonia still lime sludge from coking operations	1
K061	Emission control dust/sludge from primary prod. of steel in electric furnaces	10
K062	Spent pickle liquor generated by steel finishing (SIC codes 331 and 332)	10
K064	Acid plant blowdown slurry/sludge from blowdown slurry from primary copper prod.	10
K065	Surface impoundment solids at primary lead smelting facilities	10
K066	Sludge from treatment of wastewater/acid plant blowdown from primary zinc prod.	10
K069	Emission control dust/sludge from secondary lead smelting	10
K071	Brine purification muds from mercury cell process in chlorine production	1
K073	Chlorinated hydrocarbon waste from diaphragm cell process in chlorine production	10
K083	Distillation bottoms from aniline extraction	100
K084	Wastewater sludges from prod. of veterinary pharm. from arsenic compds.	1
K085	Distillation or fractionation column bottoms in prod. of chlorobenzenes	10
K086	Wastes/sludges from prod. of inks from chromium and lead-containing substances	10
K087	Decanter tank tar sludge from coking operations	100
K088	Spent potliners from primary aluminum reduction	10
K090	Emission control dust/sludge from ferrochromiumsilicon prod.	10
K091	Emission control dust/sludge from ferrochromium prod.	10
K093	Dist. light ends from prod. of phthalic anhydride by ortho-xylene	5000
K094	Dist. bottoms in prod. of phthalic anhydride by ortho-xylene	5000
K095	Distillation bottoms in prod. of 1,1,1-trichloroethane	100
K096	Heavy ends from dist. column in prod. of 1,1,1-trichloroethane	100
K097	Vacuum stripper discharge from the chlordane chlorinator in prod. of chlordane	1
K098	Untreated process wastewater from the prod. of toxaphene	1

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K099	Untreated wastewater from the prod. of 2,4-D	10
K100	Waste leaching soln from emission control dust/sludge in secondary lead smelting	10
K101	Dist. tar residue from aniline in prod. of veterinary pharm. from arsenic compd.	1
K102	Residue from activated carbon in prod. of veterinary pharm. from arsenic compds.	1
K103	Process residues from aniline extraction from the prod. of aniline	100
K104	Combined wastewater streams generated from prod. of nitrobenzene/aniline	10
K105	Aqueous stream from washing in prod. of chlorobenzenes	10
K106	Wastewater treatment sludge from mercury cell process in chlorine prod.	1
K107	Column bottoms from separation in prod. of UDMH from carboxylic acid hydrazides	10
K108	Condensed column overheads and vent gas from prod. of UDMH from -COOH hydrazides	10
K109	Spent filter cartridges from purif. of UDMH prod. from carboxylic acid hydrazides	10
K110	Condensed column overheads from separation in UDMH prod. from -COOH hydrazides	10
K111	Product washwaters from prod. of dinitrotoluene via nitration of toluene	10
K112	Reaction by-product water from drying in toluenediamine prod from dinitrotoluene	10
K113	Condensed liquid light ends from purification of toluenediamine during its prod.	10
K114	Vicinals from purification of toluenediamine during its prod from dinitrotoluene	10
K115	Heavy ends from toluenediamine purification during prod. from dinitrotoluene	10
K116	Organic condensate from solvent recovery system in prod. of toluene diisocyanate	10
K117	Wastewater from vent gas scrubber in ethylene bromide prod by ethene bromination	1
K118	Spent absorbent solids in purification of ethylene dibromide in its prod.	1
K123	Process waterwater from the prod. of ethylenebisdithiocarbamic acid and salts	10
K124	Reactor vent scrubber water from prod of ethylenebisdithiocarbamic acid and salts	10
K125	Filtration/other solids from prod. of ethylenebisdithiocarbamic acid and salts	10
K126	Dust/sweepings from the prod. of ethylenebisdithiocarbamic acid and salts	10
K131	Wastewater and spent sulfuric acid from the prod. of methyl bromide	100

K132	Spent absorbent and wastewater solids from the prod. of methyl bromide	1000
K136	Still bottoms from ethylene dibromide purif. in prod. by ethene bromination	1
K141	Process residues from coal tar recovery in coking	1
K142	Tar storage tank residues from coke prod. from coal or recovery of coke by-prods	1
K143	Process residues from recovery of light oil in coking	1
K144	Wastewater residues from light oil refining in coking	1
K145	Residues from naphthalene collection and recovery from coke by-products	1
K147	Tar storage tank residues from coal tar refining in coking	1
K148	Residues from coal tar distillation, including still bottoms, in coking	1
K149	Distillation bottoms from the prod. of chlorinated toluenes/benzoyl chlorides	10
K150	Organic residuals from Cl gas and HCl recovery from chlorinated toluene prod.	10
K151	Wastewater treatment sludge from production of chlorotoluenes/benzoyl chlorides	10
K156	Organic waste from production of carbamates and carbamoyl oximes	1
K157	Wastewaters from production of carbamates and carbamoyl oximes (not sludges)	1
K158	Bag house dusts & filter/separation solids from prod of carbamates, carb oximes	1
K159	Organics from treatment of thiocarbamate waste	1
K160	Solids from production of thiocarbamates and treatment of thiocarbamate wastes	1
K161	Purif. solids/bag house dust/sweepings from prod of dithiocarbamate acids/salts	1
K169	Crude oil storage tank sediment from petroleum operations	10
K170	Clarified slurry oil tank sediment from petroleum refining operations	1
K171	Spent hydrotreating catalyst from petroleum refining operations.	1
K172	Spent hydrotreating catalyst from petroleum refining operations.	1
K174	Wastewater treatment sludges from the production of vinyl chloride or ethylene dichloride monomer	1
K175	Wastewater treatment sludges from the production of ethylene dichloride or vinyl chloride monomer	1

Note: Delaware reportable quantities (DRQs) are based

upon EPA RCRA waste streams and unlisted hazardous wastes reportable quantities (RQs) as published in EPA List of Lists as EPA publication Number: EPA 550-B-01-003.

The term hazardous waste substance includes RCRA listed and characteristic hazardous wastes. The establishments of RQs for hazardous waste differs from the methodology applied to individual hazardous substances, as the RQ for hazardous waste is based on the results of an analysis of hazardous constituents in the waste stream. When the RQ of each hazardous constituent is established, the lowest RQ of each of these constituents then becomes the adjusted RQ for the waste stream. In the event there are constituents in the hazardous waste that are not considered hazardous substances, a reference RQ is developed for these constituents in order to assign an appropriate RQ.

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**DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code,  
Sections 915(e),(k), (n) and 1920 (7 Del.C.  
915(e),(k), (n) and 1920)

**SAN# 2003-06**

**1. Title Of The Regulations:**

Tidal Finfish Regulations, Shellfish Regulations.

**2. Brief Synopsis Of The Subject, Substance And Issues:**

To create a new Tidal Finfish Regulation 29 and a new Shellfish Regulation S-76 that establish procedures for conducting the first lottery and subsequent lotteries of available commercial gill net permits and authorization for commercial hook and line permits (Tidal Finfish Regulation 29), and commercial crab dredge, conch pot, and conch dredge licenses (Shellfish Regulation S-76). It is proposed that the first lottery for available licenses be held on July 1, 2003 and subsequent lotteries will be held the first working day in January of each year thereafter, as long as one or more licenses are available. Participants in the lotteries shall include current participants in the apprentice program who have completed the required and properly documented 150 days of commercial fishing activities over no less than a 2-year period dating from the specific date the applicant signed up as an apprentice, according to the provisions of §915(e),(k), and (n); and §1920, 7 Delaware Code. Other dates suggested for the first and subsequent lotteries will be considered.

**3. Possible Terms Of The Agency Action:**

N/A

**4. Statutory Basis Or Legal Authority To Act:**

7 Del.C. §915(e),(k), and (n); §1920.

**5. Other Regulations That May Be Affected By The Proposal:**

N/A

**6. Notice Of Public Comment:**

Individuals may present their opinions and evidence and/or request additional information by writing, or calling or visiting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, Delaware 19901, (302)739-3441. A public hearing on this proposed amendment and new regulation will be held at the Department of Natural Resources and Environmental Control Auditorium 89 Kings Highway, Dover, DE at 7:30 PM on May 28, 2003. The record will remain open for written or e-mail comments to [roy.miller@state.de.us](mailto:roy.miller@state.de.us) until 4:30 PM on May 30, 2003

**Tidal Finfish Regulation No. 29, License Lotteries For Apprentices.**

The first lottery for available commercial gill net permits and authorization for commercial hook and line permits shall be held on July 1, 2003; with subsequent lotteries to be held annually the first working day in January of each year, as long as one or more licenses are available. Participants in the lotteries shall include current participants in the apprentice program who have completed the required and properly documented 150 days of commercial fishing activities over no less than a 2-year period dating from the specific date the applicant filed their application with the Department as an apprentice, according to the provisions of §915(e),(k), and (n), 7 Delaware Code. Other dates suggested for the first and subsequent lotteries may be considered."

**Shellfish Regulation S-75.**

The first lottery for available commercial crab dredge, conch pot, and conch dredge licenses shall be held on July 1, 2003; with subsequent lotteries to be held annually the first working day in January of each year, as long as one or more licenses are available. Participants in the lotteries shall include current participants in the apprentice program who have completed the required and properly documented 150 days of commercial fishing activities over no less than a 2-year period dating from the specific date the applicant filed their application with the Department as an apprentice, according to the provisions of §1920, 7 Delaware Code. Other dates suggested for the first and subsequent lotteries may be considered."

Symbol Key

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. [**Bracketed Bold language**] indicates text added at the time the final order was issued. [~~Bracketed stricken through~~] indicates language deleted at the time the final order was issued.

Final Regulations

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the Register of Regulations, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF FACILITIES MANAGEMENT**

Statutory Authority: 29 Delaware Code  
Section 6962(c) (29 **Del.C.** §6962(c))

**ORDER ADOPTING RULES AND REGULATIONS**

**AND NOW**, this SEVENTH day of APRIL, 2003, in accordance with 29 *Del. C.* § 6962(C) and for the reasons stated hereinafter, the Department of Administrative Services (hereinafter the "Department") enters this Order adopting regulations pertaining to the Annual Prequalification of Contractors and Subcontractors.

**I. Nature of the Proceedings**

Pursuant to the Department's authority under 29 *Del. C.* § 6962(c) and Subchapter II of Chapter 101 of Title 29 of the Delaware Code, the Department proposed to enact regulations to implement the annual prequalification of contractors and subcontractors. Notice of the public hearing to consider the proposed regulations for the annual prequalification of contractors and subcontractors was published in the Delaware *Register of Regulations* and two Delaware newspapers of general circulation, in accordance with 29 *Del.C.* § 10115 (Exhibit A). The text of the proposed amendment is attached as Exhibit B. The public hearing was held on March 25, 2003 at 10:00 a.m. in Dover,

Delaware, as duly noticed, and members of the Department were present. Since no comments concerning the proposed regulations were received prior to the public hearing, and no comments were made during the meeting, the Department adopted the proposed regulations for the annual prequalification of contractors and subcontractors as proposed. This is the Department's Decision and Order ADOPTING the Regulations as proposed.

**II. Evidence and Information Submitted**

The Department received no written comments in response to the notice of intention to adopt the proposed regulations for the annual prequalification of contractors and subcontractors. At the March 25, 2003 hearing, the Committee received no oral comments.

**III. Findings of Fact and Conclusions**

The public was given notice of the proposed regulations for the annual prequalification of contractors and subcontractors and offered an adequate opportunity to provide the Department with comments.

The proposed regulations for the annual prequalification of contractors and subcontractors is required pursuant to with 29 *Del. C.* § 6962(C).

The Department concludes that it has statutory authority to promulgate rules and regulations for the annual prequalification of contractors and subcontractors pursuant to 29 *Del. C.* § 6962(C).

For the foregoing reasons, the Department concludes that it is necessary to adopt the proposed amendment to its Rules and Regulations.

#### **IV. Decision and Order to Adopt Amendments**

**NOW, THEREFORE**, by the decision of the Department, **IT IS ORDERED**, that the proposed regulations for the annual prequalification of contractors and subcontractors is approved and adopted in the exact text as set forth in Exhibit B attached hereto. The effective date of this Order is ten (10) days from the date of its publication in the Delaware *Register of Regulations* pursuant to 29 Del. C. § 10118(g).

#### **BY ORDER OF THE DEPARTMENT OF ADMINISTRATIVE SERVICES**

Gloria Wernicki Homer, Secretary

**\*Please note that no changes were made to the regulation as originally proposed and published in the March 2003 issue of the Register at page 998 (6 DE Reg. 998). Therefore, the final regulation is not being republished. Please refer to the March 2003 issue of the Register or contact the Division of Professional Regulation.**

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#### **DIVISION OF PROFESSIONAL REGULATION BOARD OF ELECTRICAL EXAMINERS**

24 DE Admin Code 1400

Statutory Authority: 24 Delaware Code,  
Sections 1406(a)(1) (24 Del.C. §§1406(a)(1))

#### **ORDER**

A public hearing was held to receive comments on April 2, 2003 at the regularly scheduled meeting of the Board of Electrical Examiners. At the meeting that followed, the Board considered changes to its rules and regulations that were published in the Register of Regulations, Vol. 6, Issue 9, March 1, 2003.

#### **Summary Of The Evidence And Information Submitted**

No written comments were received. The verbal comment is summarized below:

1. Robert Smith of First State Inspections commented on proposed Rule 15.4. He is concerned about the duty imposed on the agencies to confirm that an applicant for an inspection was a current Delaware licensee. It is important

that they have the information necessary to comply with the rule.

#### **Findings Of Fact With Respect To The Evidence And Information Submitted**

1. The Division of Professional Regulation has agreed to provide a list of the names of the active licensees to all of the Delaware inspection agencies quarterly. If a person is licensed during the quarter, an agency can confirm the license by calling the Division. There is also some responsibility on the licensee to provide documentation. The names of the new or re-activated licensees also appear in the Board meetings.

#### **Decision And Effective Date**

The Board of Electrical Examiners hereby adopts to the Rules and Regulations as proposed to be effective 10 days following final publication in the Register of Regulations.

#### **Text And Citation**

The text of the Rules and Regulations appears in the Register of Regulations, Vol. 6, Issue 9, March 1, 2003.

#### **BOARD OF ELECTRICAL EXAMINERS**

Donald King, President	Shirley Good, Secretary
Steven Dignan, Vice President	Richard Strouse
Leroy James	John W. Gordy
James H. Green	Jacob Good

**\*Please note that no changes were made to the regulation as originally proposed and published in the March 2003 issue of the Register at page 1004 (6 DE Reg. 1004). Therefore, the final regulation is not being republished. Please refer to the March 2003 issue of the Register or contact the Division of Professional Regulation.**

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#### **DIVISION OF PROFESSIONAL REGULATION BOARD OF PHARMACY**

24 DE Admin. Code 2500

Statutory Authority: 24 Delaware Code,  
Section 2509 (24 Del. C. §2509)

#### **ORDER**

A public hearing was held to receive comments on March 12, 2003 at a scheduled meeting of the State Board of Pharmacy. The Board considered proposed changes to Regulations 1.0 and 11.0 as published in the Register of Regulations, Vol. 6, Issue 8, February 1, 2003.

**Summary Of The Evidence And Information Submitted***The following is a summary of the written comments:*

Patricia L. Maichle, Chairperson of the Governor's Advisory Counsel for Exceptional Citizens, Jamie Wolfe, Chairperson of Delaware Developmental Disabilities Council, and Rita Landgraf, Chairperson of the State Council for Persons with Disabilities, sent in similar comments in their letters dated February 24, 25 and 27, 2003 respectively. The commenters had concerns about Rule 11.2.5 restricting handling of prescription drugs to licensed personnel. They thought it was too restrictive since non-licensed individuals may be authorized to assist with medications under certain circumstances.

Karen Nishi, R.Ph., M.A.S. director of Regulatory Affairs for Pyxis sent a letter dated March 7, 2003 with her comments related to Rule 11. She thought the pharmaceutical services committees of various facilities would be better able to determine what medications were contained in emergency or interim boxes and the Rule should not require board or executive secretary approval.

Suzanne E. Raab-Long, Vice President of Professional Services of the Delaware Health Care Association sent a letter dated March 12, 2003 with specific comments and questions related to Regulation 11. She did not think nurses should have to maintain a log of non-controlled substances. She also felt that if authority is delegated to the Executive Secretary, there should be recourse to the full Board for any disagreement. She also suggests nurses should not affix labels to prescription containers with pharmacists initials, returned medication should be limited to non-controlled medications in original packaging, the pharmacy should not be responsible for needle accountability, and stocking of controlled substances for non-patient specific use should be allowed in automatic dispensing apparatus.

Pat Carroll-Grant, R.Ph, C.D.E. Director of Pharmacy, Cardinal Health Care, sent a letter dated March 4, 2003 with specific recommendations for various sections of the Rules. Her comments include requests for clarification, accountability standardizations, and language that would limit the burden now placed on consultant pharmacists at long term care facilities.

*The following is a summary of the verbal comments:*

1. Mark Abrams has been a consultant pharmacist for over 30 years. He urged the board to follow the federal model and to evolve from process regulations to outcome regulations which permit each facility to be more involved in developing the policy and procedures necessary to insure the appropriate outcomes for the outpatients. He suggested that the consultant should be more responsive to the attending rather than the prescribing physician with concerns about

drug interactions.

2. Pat Carroll-Grant testified in support of the philosophy of Mark Abrams and offered a list of comments which she also provided in writing. She thought some of the terms used were not clear in the regulation. Her recommendation was that the Board and not the Executive Secretary should interview consultants in the same way that it is handled for pharmacists-in-charge in community pharmacies. She thought the documentation and accountability should be consistent throughout the Rule and long term care facilities should be no more regulated than retail establishments. Some of the accountability proceedings seem to be redundant. She joined in the concerns of Mark Abrams and suggested that the duties be determined in the Regulations and not the specific of how to accomplish the responsibilities of the consultant pharmacist. She also mentioned that the language limiting some activities to interns should be expanded to include students that are doing rotations in an experienced program from their school that has been approved by the board.

3. Mary Ann Holzapfel has been a pharmacist for 20 years and is presently a consultant pharmacist at two State and one private facility. She had specific comments about various Rules and thought some of the terms were not clear. She believes that professionals who practice in this area should be included in the development of Rules and Regulations.

**Findings Of Fact With Respect To The Evidence And Information Submitted**

1. There were no comments related to Regulation 1 but the Board feels that it is incomplete in its present form and it should be returned for revision to include changes to 1.7.4.

2. The overarching concern of persons commenting on the draft is the philosophy underlying Regulation 11 and how the protection of the public should be accomplished without micro-managing the consultant pharmacist in long term care facilities. The Board agrees that this needs to be returned for reconsideration and revision of the entire Regulation in view of the comments that were made at the public hearing.

3. The Board wants to be clear that consultants from long term care facilities were included as part of the committee that developed draft Regulation 11. The committee will continue to work on Regulation 11 and perhaps include other consultant pharmacists who practice in long term care facilities. The goal for the committee will be to develop a Regulation that insures proper patient care but does not so burden the consultant pharmacist that he or she is unable to participate in the important clinical duties.

**Decision**

The changes to Regulation 1.0 require substantive changes relating reciprocal applicants and shall be revised and republished. The changes to Regulation 11.0 are being referred back to a committee for a comprehensive revision.

**SO ORDERED** this 9th day of April, 2003.

**STATE BOARD OF PHARMACY**

Calvin Freedman, R.Ph., President  
Daniel Hauser, Pharm. D.  
Yvonne Brown, R.Ph., Vice President  
Karen J. Dey, R.Ph.  
Jack Murphy, R.Ph.  
Carolyn Calio, Public Member  
Nancy E. Weldin, Public Member

\* **PLEASE NOTE: THE PROPOSED CHANGES TO REGULATIONS 1.0 AND 11.0 ARE BEING WITHDRAWN. THEREFORE, THEY ARE NOT BEING REPUBLISHED.**

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**DEPARTMENT OF AGRICULTURE**

Statutory Authority: 29 Delaware Code,  
Sections 4815(b)(3)b.2.D. 29 & 8103 (8)  
(29 Del.C. §§ 4815(b)(3)b.2.D.29, 8103 (8))

**ORDER****I. Nature Of Proceedings**

Pursuant to its authority under 29 Del. C. §§4815(b)(3)b.2.D and 8103(8), the Department proposed to amend its regulations concerning the Standardbred Breeders Fund. The Department's purpose in proposing amendments is to comply with Delaware Harness Racing commission rules, to make the program language more specific under certain racing conditions, to promote fairness, and to allow the races to be contested within the normal racing card at Harrington Raceway and Dover Downs.

Notice of the public hearing on the Department's proposed amendments was published in the Delaware *Register of Regulations* for March 1, 2003 as well as in two Delaware newspapers in general circulation in accordance with 29 Del. C. §10115. Thereafter, the public hearing was held as noticed on Friday, April 11, 2003 before the Department's Secretary, Michael T. Scuse. This is the Department's Decision and Order adopting the proposed amended regulations.

**II. Evidence Submitted At Public Hearing**

The Department received no written comments in response to the notice of intention to adopt the proposed amended regulations. A public comment was received at the April 11, 2003 public hearing from Elizabeth Harris suggesting that the definition of "breeding season" be modified so that the end of such season would be July 15 and not August 1. This proposal was rejected as calling for an end date to the breeding season inconsistent with Delaware Harness Racing Commission Regulation 6.2.2 with which it must be in harmony.

**III. Findings And Conclusions**

The Public was given the required notice of the Department's intention to adopt the proposed amended regulations and was given ample opportunity to provide the Department with comments opposing the Department's plan. Thus, the Department concludes that its consideration of the proposed amended regulations was entirely within its prerogatives and statutory authority and, having received no comments opposed to adoption, is now free to do so.

**IV. Order**

**NOW THEREFORE**, it is hereby ordered that:

1. The proposed amendments to the Department's Standardbred Breeders Fund regulations are adopted;
2. The text of the regulations shall be in the form attached hereto as Exhibit A;
3. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations* in accordance with 29 Del. C. §10118(e); and
4. The Department reserves unto itself the authority to issue such other and further orders in this matter as may be just and proper.

Michael T. Scuse, Secretary  
Delaware Department of Agriculture, April 11, 2003

**Standardbred Breeder's Fund Regulations  
Delaware Standardbred Breeders' Fund Program****1.0 Introduction**

1.1 These regulations are authorized pursuant to §4815(b)(3)b.2.D. of Title 29 of the Delaware Code, which established in the State of Delaware a Delaware Standardbred Breeder's Program (herein "the Program") for:

- (1) Standardbred horses;
- (2) bred in a manner prescribed in Section 2.0 herein;
- (3) the product of a registered Delaware stallion;
- (4) who are registered and whose sire and mare are

registered with the Delaware Harness Racing Commission (herein "the Commission") and the Administrator of the Breeder's Program (herein "the Administrator") as such; and,

(5) listed in their registry books.

Those horses eligible to race under said Delaware Standardbred Breeder's Program shall be any foal of any registered Delaware stallion standing at a Delaware breeding farm and either owned by a resident of the State of Delaware or owned by a non-resident who holds a lease for a period of the breeding season and will stand the stallion for that full season on a Delaware breeding farm. A copy of any such lease shall be filed with the United States Trotting Association, the Administrator of the Breeder's Program, and the Delaware Harness Racing Commission.

1.2 The Board of the Delaware Standardbred Breeder's Program (herein "the Board") is authorized to do all that is reasonable and necessary for the proper administration of the Program and shall prepare, issue and promulgate rules and regulations providing for:

(1) Classes and divisions of races, eligibility of horses and owners therefor and purses and bonuses to be awarded;

(2) Nominating, sustaining and entry fees on horses and races;

(3) Such temporary programs including eligibility of horses, breeding, and other matters as may be necessary to make the Program operable as soon as possible;

(4) Registration and certification of Delaware stallions, mares bred to such stallions and foals produced thereby; and,

(5) Such other matters as the board determines to be necessary and appropriate for the proper administration and implementation of the Program.

1.3 The funds for the Delaware Standardbred Breeder's Program pursuant to §4815(b)(3) of Title 29 of the Delaware Code and any nominating, sustaining and entry fees provided for herein shall be administered by the Delaware Department of Agriculture by deposit in a trust account entitled Delaware Standardbred Breeders' Fund. The Board of the Delaware Standardbred Breeder's Program shall approve an annual budget including the payment of purses and awards, cost of administration, reimbursement of expenses of members of the Board, promotional expenses, and any other appropriate expenses. The budget shall be administered by the Secretary of Agriculture or his designee in consultation with the Board and in a manner consistent with the state laws and procedures. A report shall be prepared and filed annually by the secretary with the Delaware Harness Racing Commission and the Board of the Breeder's Program Fund setting forth an itemization of all deposits to and expenditures from said fund.

1.4 Races for the Program shall be run at each licensed harness track in the State of Delaware. Said races and purses and awards awarded therefore shall be pursuant to the rules

and regulations of the Board of the Delaware Standardbred Breeder's Program hereunder, and the Delaware Harness Racing Commission.

1.5 The Board of the Delaware Standardbred Breeder's Program can amend these regulations through a vote of 2/3 majority of the entire board. Changes to the rules of eligibility for the Delaware Standardbred Breeder's Program will be effective at the beginning of the next breeding season and the corresponding racing season.

## 2.0 Definitions.

The following words and terms, when used in this part for the purposes of the Delaware Standardbred Breeder's Fund Program, have the following meanings, unless the context clearly indicates otherwise:

**"Bred"** Bred shall refer to any form of insemination inside the State of Delaware by a Delaware sire, including insemination using semen transported within the State of Delaware, provided that such semen is not frozen or desiccated in any way or at any time. Bred shall also refer to foals of mares bred outside the State of Delaware by a Delaware sire through interstate semen transportation when such semen is not frozen or desiccated in any way or at any time, provided that owners of mares that produce foals from Delaware sires eligible for this program that are bred through interstate semen transportation shall not be eligible for bonuses paid to owners of mares under the Delaware Standardbred Breeder's Program set forth in Section 4 herein. A foal conceived through embryo transplantation is not eligible for nomination to the Delaware Standardbred Breeder's Program under any circumstances.

**"Breeder"** A breeder is the owner of the dam at the time of breeding through foaling.

**"Breeding Season"** A breeding season runs from February 15th to ~~December 31st~~ August 1st of the calendar year.

**"Delaware-bred horse"** A Delaware-bred horse is a standardbred by a Delaware sire and registered with the Harness Racing Commission and Administrator of the Breeder's Program, provided that for the purposes of determining eligibility for race years 2002 and 2003 Delaware-bred horses shall also include any foal of a 100% wholly owned mare at the time of breeding through foaling by a Delaware resident registered with the Harness Racing Commission and Administrator of the Breeder's Program by August 15th of the yearling year.

**"Delaware resident"** A Delaware resident is as defined in §10032 of Title 3 of the Delaware Code.

**"Delaware sire"** A Delaware sire is a standardbred stallion that regularly stands for a breeding season in Delaware, does not compete for purses, and is registered with the Harness Racing Commission and Administrator of the Breeder's Program. A Delaware sire may be: a) owned by a resident of the State of Delaware and

standing the entire breeding season in the State of Delaware; or b) owned by a resident of a state other than Delaware, but standing the entire breeding season in Delaware, verified by a copy of a the lease filed with the Administrator of the Program and the Harness Racing Commission at the time of registration for the Program, as provided in section 1.1 above; or c) owned jointly by a resident (or residents) and non-resident (or non-residents) of Delaware and standing the entire breeding season in Delaware with the same lease requirements as in b) above.

**"Private Treaty"** No stallion participating in the Delaware Standardbred Breeder's Program may be offered under private treaty. Each stallion registered in the Delaware Standardbred Breeder's Program must make public the maximum possible breeding fee."

Such definitions shall not affect the use of that term by the Delaware Harness Racing Commission for purposes other than for the Breeder's Fund Program.

### **3.0 Eligibility for Delaware-bred races.**

To be eligible for races under the Program for race years 2002 and 2003, a horse, which shall be registered with the Administrator and Commission by August 15th of its yearling year, shall be: 1) the product of a 100% wholly owned mare at the time of breeding through foaling by a Delaware resident, which mare shall be registered with the Administrator and Commission by August 15, 2000 for the breeding seasons of 1999 and 2000 and by August 15, 2001 for the breeding season of 2001; and/or, 2) the product of a Delaware-sire, which sire shall be registered with the Administrator and Commission by March 1, 2000 for the breeding seasons of 1999 and 2000 and by August 15, 2001 for the breeding season of 2001.

To be eligible for races under the Program for race year 2004, the horse shall be a Delaware sired 2 year old registered with the Administrator and Commission by August 15th of its yearling year or a 3 year old product of a 100% wholly owned mare at the time of breeding through foaling by a Delaware resident, which mare shall have been registered with the Administrator and Commission by August 15, 2000 for the breeding seasons of 1999 and 2000 and by August 15, 2001 for the breeding season of 2001 or a 3 year old product of a Delaware-sire, which sire shall have been registered with the Administrator and Commission by March 1, 2000 for the breeding seasons of 1999 and 2000 and by August 15, 2001 for the breeding season of 2001.

To be eligible for races under the Program for race year 2005 and thereafter, the horse shall be a Delaware sired 2 or 3 year old registered with the Administrator and Commission by August 15th of its yearling year.

### **4.0 Eligibility of breeders for bonus payments.**

Bonus payments of eight percent (8%) of money earned in the Program by the foals shall be paid to the owner of the

mare at the time of breeding that is bred to Delaware sires to produce that foal. Bonus payments of two percent (2%) of money earned in the Program by the foals shall be paid to owners of stallions standing in Delaware. In order for a Delaware-bred horse to be eligible to earn an award for its breeder, in a race conducted by a licensed harness race track in Delaware, the foals, mares, and stallions shall be registered in accordance with these regulations with the Harness Racing Commission and Administrator of the Breeder's Program prior to entry for the race. In race year 2002, bonus payments shall be restricted to 2 year olds. For race years 2003 and thereafter, bonus payments shall not exceed \$70,000. In the event such payments would exceed these limits, owners eligible for bonus payments shall receive a prorated share of those monies allocated toward the payment of bonus payments.

### **5.0 Eligibility of owners of Delaware sires for awards.**

In order for a Delaware sire to be eligible to earn an award for its owner, the sire shall have been registered as a sire of Delaware with the Harness Racing Commission and Administrator of the Breeder's Program during each breeding season when the sire inseminated the dams that, as a result of that insemination, produced Delaware-breds. To be eligible for a sire award, it is necessary that the foal entitling the sire owner to the award be itself registered in accordance with these regulations.

### **6.0 Records of registration.**

Foals and sires eligible for registration shall be registered on official registration forms approved by the Harness Racing Commission and maintained by the Administrator of the Breeder's Program. The registrar shall certify thereon the name and address of the owner, breeder, farm where mare was inseminated, farm on which this horse was foaled, owner of stallion at time the mare was inseminated, owner of the mare at the time of breeding, notice of semen transfer, stallion by which the mare was inseminated following the birth of the standardbred to be registered, breeder social security or tax identification number, United States Trotting Association registration number, name of foal, color and sex of foal, date of foaling, sire, dam, sire of the dam, signature of the owner, or breeder or authorized representative and the date of application. The registration record shall be maintained at the Administrator of the Breeder's Program and be open to public inspection during normal business days and hours at the State Department of Agriculture. Immediately upon completion and filing of the form, the Administrator of the Breeder's Program shall cause a correct copy of it to be filed with the offices of the State Department of Agriculture.

### **7.0 Appeals.**

A person having an interest in a matter concerning the registration of a horse in the Breeder's Program shall have

the right to file objections or exceptions to a registration and to the facts set forth therein within 30 days of the filing of the copy of the registration with the Administrator and the Delaware Harness Racing Commission. The objections or exceptions shall be filed in writing with the Administrator of the Breeder's Program and a duplicate delivered to the Harness Racing Commission within the 30-day time period. An interested party aggrieved of an action taken by the Administrator may appeal to the Commission in the manner prescribed for appeals. The Commission shall hear and determine an appeal de novo. In the absence of objections or exceptions timely made, a registration shall be deemed final and binding and an official record of the Commission at the expiration of the 30th day of the delivery to the Commission. The Commission shall thereafter have the right on its own motion to correct an error or inaccuracy that it may find within the records.

#### **8.0 Records of expenses.**

The Administrator of the Breeder's Program shall maintain a complete record of reasonable and necessary expenses and will submit quarterly estimates to the Board and the Secretary of Agriculture, on the basis of which the Secretary may disburse advances. The quarterly estimated statements of expenses and advances shall be reconciled annually with a certified statement of expenses to be prepared by an auditor approved in advance by the Board. The Board may thereafter review them and after approval of allowable items shall then reimburse the Administrator of the Breeder's Program for expenses the Board finds reasonable and appropriate to this program. If advances on account of expenses exceed actual expenses as approved at the end of a given year, the excess shall be deemed disbursed on account of the ensuing year's expenses.

#### **9.0 Purses and Bonus Awards**

9.1 A purse or bonus awarded under this section shall be in accordance with the standards for purses at each racing meet as approved by order of the Commission. The racing association shall maintain a separate ledger of such purses and bonuses and shall transmit a certified copy of allowances, bonus payments, and purses made no later than the 10th day of each month of the meet to the Commission. After the Commission has reviewed and approved them, it shall reimburse the racing association for the advances made which the Commission finds proper.

9.2 Administrator of the Breeder's Program shall compile awards earned by breeders and owners of Delaware sires and maintain a separate ledger of them. A certified report of awards earned shall be forwarded to the Commission on a monthly basis during the racing season. The list of awards will be forwarded to Administrator of the Breeder's Program who shall ensure payment to the awardees, subject to approval by the Commission.

9.3 A person interested in the awards, allowances, prizes and purses and objecting to calculations or determinations thereof as shown on the records of the Administrator of the Breeder's Program and the Harness Racing Commission shall be responsible for taking written appeals to the Commission in the manner provided for appeals from decisions of the Administrator pertaining to registrations.

9.4 The Board will have the right to review and approve fees and charges imposed by the Administrator of the Breeder's Program. The charge or fee may not be imposed without prior approval by the Board.

9.5 Records, funds and accounts of funds, prizes, purses, allowances and awards under this program shall be maintained separate from other records, funds and accounts and may not become co-mingled with other matters. The records, funds and accounts shall be kept continuously open for inspection by the Administrator of the Breeder's Program.

#### **10.0 Responsibilities-Owners or lessees of standardbred stallions and mares**

10.1 An owner or lessee of a standardbred stallion who desires to use him for breeding purposes and to have him qualify for the Delaware Standardbred Breeders' Fund Program, shall register the stallion by December 1st of the approaching breeding season with the Delaware Harness Racing Commission and the Administrator of the Breeder's Program or by January 1st of the approaching breeding season with an additional supplemental fee equal to the standard registration fee. For breeding season 1999 and 2000, an owner or lessee of a standardbred stallion who desires to use him for breeding purposes and to have him qualify for the Delaware Standardbred Breeders' Fund Program, shall register the stallion by March 1, 2000. Unless the stallion is contracted to stand at stud in the southern hemisphere, the stallion shall stand in the State of Delaware for the remainder of the breeding season. If a stallion is contracted to stand at stud in the southern hemisphere, a copy of said contract must be provided to the Administrator of the Program and the Harness Racing Commission at the time of application for eligibility in the Program or, in the event the contract is entered into at a subsequent date, within ten days of entering into the contract. A virgin standardbred stallion entering stud for the first time shall be registered prior to his first breeding and shall stand in the State of Delaware the remainder of the breeding season, unless he is contracted to stand at stud in the southern hemisphere. A stallion shall be registered on an application for standardbred stallion certificate for eligibility established by the Administrator of the Breeder's Program in consultation with the Harness Racing Commission.

10.2 An owner or lessee of a stallion eligible for the Delaware Standardbred Breeders' Fund Program shall

designate a resident of Delaware as the authorized agent who shall be responsible for the registrations and records of the farm; and complying with the requirements of the Delaware Standardbred Breeders' Fund Program. The "Authorized Agent" form shall be filed with the stallion registration.

10.3 In order for foals of 100% wholly owned mares at the time of breeding through foaling by a Delaware resident to be eligible for races under the Program for race years 2002 and 2003, said mares shall be registered with the Administrator and Commission by August 15, 2000 for the breeding seasons of 1999 and 2000. No fee shall be charged for registering said mare.

### **11.0 Sire Registration Fees**

11.1 Sires shall initially register for the Delaware Standardbred Breeder's Program no later than December 1st of the approaching breeding season, or no later than January 1st with an additional supplemental registration fee equal to the regular registration fee. For sires registering in breeding season 2000, sires shall initially register for the Delaware Standardbred Breeder's Program no later than March 1, 2000.

11.2 All fees must accompany this registration and must be submitted by registered or certified mail.

11.3 Registration fees for the Delaware Standardbred Breeder's Program are non-refundable.

11.4 Sire registration fee for a stallion shall be \$500.00. Sire registration for those sires standing in the State of Delaware and registering for breeding seasons prior to 2001 in accordance with these regulations shall be charged a single fee of \$250.00.

11.5 The annual stallion registration fee may be used to offset reasonable expenses related to administering and promoting the Delaware Standardbred Breeder's Program. Any fees beyond reasonable expenses shall be invested in the endowment account of the Delaware Standardbred Breeder's Program.

11.6 The annual stallion registration fee may be used to offset reasonable expenses related to administering and promoting the Delaware Standardbred Breeder's Program. Any fees beyond reasonable expenses shall be invested in the endowment account of the Delaware Standardbred Breeder's Program. An owner of a standardbred stallion registered with the Administrator and Commission shall submit by December 1st of each year the stallion registration fee, or January 1st with the supplemental fee provided in section 10 above and a report for each stallion that states each mare bred by said stallion during the preceding twelve (12) months. For breeding seasons prior to breeding season 2001, an owner of a standardbred stallion registered with the Administrator and Commission shall submit by March 1, 2000 the stallion registration fee of \$250 and any other documentation required by the Administrator

and Commission to verify where the stallion stood during the period for which the stallion or its progeny seek to register.

### **12.0 Sire Renewal Fees**

12.1 The registration of a stallion that remains in the state for more than one (1) breeding season shall be renewed annually.

12.2 The annual renewal fee for registration of stallions to the Delaware Standardbred Breeders' Fund Program shall be \$500.

12.3 The annual stallion registration fee may be used to offset reasonable expenses related to administering and promoting the Delaware Standardbred Breeder's Program. Any fees beyond reasonable expenses shall be invested in the endowment account of the Delaware Standardbred Breeder's Program. An owner of a standardbred stallion registered with the Administrator and Commission shall submit by December 1st of each year the stallion registration fee and a report for each stallion that states each mare bred by said stallion during the preceding twelve (12) months.

### **13.0 Penalties and Suspension from the Program**

13.1 If an owner or a lessee of a registered stallion fails to furnish information the Administrator of the Breeder's Program has requested relating to the registration or renewal of registration of a horse, the Administrator of the Breeder's Program shall:

- (a) Suspend or deny the registration of the stallion;
- and
- (b) Schedule a hearing within thirty days of the denial or suspension.

After the hearing, the Administrator of the Breeder's Program shall determine within ten working days whether the failure to furnish information was willful; and:

- (a) Suspend the registration; or
- (b) Rescind its suspension of the registration; or
- (c) Deny or revoke the registration; or
- (d) 1. Deny or revoke the registration; and
- 2. Bar from further registration, horses owned by the person who executed the application containing false or misleading information.

If the Administrator of the Breeder's Program determines that a registration is incorrect, or an application for registration, renewal of registration, or transfer of a registered stallion contains false or misleading information, the Administrator shall:

- (a) Suspend or deny the registration of the stallion;
- and
- (b) Summon the person who executed the application, and any person who has knowledge relating to the application, to appear before the Administrator at a hearing;

After the hearing, the Administrator of the

Breeder's Program shall determine within ten working days whether the person knew or had reason to know that the information was false or misleading, and:

- (a) Rescind its suspension or denial of the registration; or
- (b) Suspend, deny, or revoke the registration; or
- (c) 1. Deny or revoke the registration; and
- 2. Bar from further registration, horses owned by the person who executed the application containing false or misleading information.

If a person summoned by the Administrator of the Breeder's Program fails to respond to the summons within ten working days, the Administrator of the Breeder's Program:

- (a) Shall suspend or deny the registration of the stallion;
- (b) Notify the person in writing of the action taken by the Commission; and
- (c) May:
  - 1. Deny or revoke the registration; and
  - 2. Bar from further registration, horses owned by the person who executed the application containing false or misleading information.

#### 13.2 Appeals

Appeals of decisions to deny or suspend registrations by the Administrator of the Breeder's Program may be appealed to the Delaware Harness Racing Commission within thirty days of the action by the Administrator of the Breeder's Program, subject to the same rules and procedures for handling appeals established for the Delaware Harness Racing Commission.

#### 14.0 Races

14.1 The purses for all races, including walkovers, under this Breeder's Program shall be distributed on the following percentage basis: 50-25-12-8-5. Points to qualify for the finals shall be distributed on the same percentage basis. In fields with more than five horses, places six through nine shall receive 4-3-2-1 points, respectively.

14.2 ~~In the case of dead heats, points for the two positions shall be divided equally among those horses finishing in a dead heat. For example, if two horses finish in a dead heat for second, those horses would divide 25 plus 12 points to receive 18.5 percent of the purse or 18.5 qualifying points each.~~ In the case of a tie in points, the fastest time in either elimination shall determine the horse eligible to enter the final. In the case of horses tied in points that have recorded identical times, the amount of the horses' lifetime earnings will decide the horse eligible to enter the final. In the case where points, times, and lifetime earnings are equal, the eligible horse shall be drawn by lot.

14.3 The percentage basis established by subsection (1) of this section shall apply at each of the associations licensed by the Delaware Harness Racing Commission.

14.4 If circumstances prevent the racing of an event, and the race is not drawn, all stake payments shall be refunded to the purse account of the Delaware Standardbred Breeder's Fund Program.

14.4 The monies provided for purses and bonus payments shall be distributed evenly between the races of each:

- 1. Age;
- 2. Sex; and
- 3. Gait.

The minimum purses for elimination races for both pacers and trotters shall be \$5,000. The minimum purses for finals shall be \$30,000. The Board of the Delaware Standardbred Breeder's Program, pursuant to a recommendation from the Administrator of the Program, may agree to increase purses should funds and other conditions permit.

14.5 ~~No horse is eligible to declare unless it has at least one charted satisfactory performance line within 30 days of declaration and must meet the following qualifying standards:~~

2-Year Olds		3-Year Olds	
Pacers	Trotters	Pacers	Trotter
2:10	2:14	2:06	2:12

~~Horses that meet the qualifying standards for a preliminary leg at each racetrack are qualified for all subsequent legs and the final at that racetrack.~~ For all eliminations and finals, all horses must have their nose on the gate.

14.6 The Administrator of the Delaware Standardbred Breeder's Fund Program shall be responsible for races conducted under the Delaware Standardbred Breeder's Fund Program and shall ensure that:

(a) each track declares the time specified for races under this program by proper notice and racing dates are issued for sires stakes after the track's race dates are set.

(b) entry for races run under the Delaware Standardbred Breeder's Fund Program is required to be received by the Racing Office ~~by noon three days in advance of the scheduled race date in a box designated for this purpose.~~ at the date and time specified on the track condition sheet.

(c) The Eligibility and class of all horses running in races is carefully screened.

(d) The Administrator, or his/her designee, is present for the judges' draw for all races conducted under the Delaware Standardbred Breeder's Fund Program

#### 15.0 Nominations and Sustaining Payments.

15.1 Nomination and sustaining payments shall be made to the Delaware Standardbred Breeder's Fund in U.S. funds.

15.2 A fee payment required by this section shall be postmarked no later than the due date that is specified for the

fee by this section.

15.3 Beginning with the yearlings of 2001, the yearling nomination fee shall be:

- (a) Forty (40) dollars each; and
- (b) Due by ~~August 15~~ May 15th of the yearling year.

15.4 A nomination shall be accompanied by a photocopy of the United States Trotting Association registration certificate. Supplemental fees of \$25 shall be assessed if the USTA registration certificate does not accompany the nomination. No nomination shall be accepted where a USTA registration certificate is not obtained and submitted within 60 days of nomination to the Delaware Standardbred Breeder's Program.

15.5 If the August 15 deadline to nominate a yearling is missed, a late supplemental payment of \$350 shall be required. The late supplemental payment shall be accepted if a) it is received by April 1 of the two (2) year old year; and b) the two (2) year old March 15th payment has been made.

15.7 Sustaining payments shall be as follows:

- (a) TWO (2) YEAR OLD PAYMENTS
  - March 15th\$100
  - May 15th\$200
  - Declaration Fee (for each track)\$500
  - March 15th payment must be made to ensure eligibility as a three (3) year old.
- (c) THREE (3) YEAR OLD PAYMENTS
  - March 15\$300
  - Declaration Fee (for each track)\$500

#### **16.0 Investment Plan and Use of Fees**

16.1 All proceeds received pursuant to §4815(b)(3)b.2.D. of Title 29 of the Delaware Code, which established in the State of Delaware a Delaware Standardbred Breeder's Program (herein "the Program") and any interest earned on these monies shall be invested in an endowment account until race year 2002.

16.2 For race year 2002, five hundred thousand dollars (\$500,000) of the proceeds received pursuant to §4815(b)(3)b.2.D. of Title 29 of the Delaware Code, which established in the State of Delaware a Delaware Standardbred Breeder's Program (herein "the Program") and any interest earned on that money in the preceding twelve (12) months shall be deposited in a separate purse account for purses and bonus for that race year. For race year 2002, one million five hundred thousand dollars (\$1,500,000) of the proceeds received pursuant to §4815(b)(3)b.2.D. of Title 29 of the Delaware Code, which established in the State of Delaware a Delaware Standardbred Breeder's Program (herein "the Program") shall be deposited in the endowment account.

16.3 For race year 2003 and each race year thereafter, one million dollars (\$1,000,000) of the proceeds

received pursuant to §4815(b)(3)b.2.D. of Title 29 of the Delaware Code, which established in the State of Delaware a Delaware Standardbred Breeder's Program (herein "the Program") and any interest earned on that money in the preceding twelve (12) months shall be deposited in a separate purse account for purses and bonus for that race year. Beginning January 1, 2003 and for each race year thereafter, one million dollars (\$1,000,000) of the proceeds received pursuant to §4815(b)(3)b.2.D. of Title 29 of the Delaware Code, which established in the State of Delaware a Delaware Standardbred Breeder's Program (herein "the Program") shall be deposited in the endowment account.

16.4 Any monies from the purse account for the Delaware Standardbred Breeder's Fund Program at the end of the race year shall revert to the endowment account of the Delaware Standardbred Breeder's Fund Program.

**See 5 DE Reg. 1274 (12/1/01)**

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## **DEPARTMENT OF EDUCATION**

14 DE. Admin. Code. 830

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))

### **REGULATORY IMPLEMENTING ORDER**

#### **I. Summary Of The Evidence And Information Submitted**

The Secretary of Education intends to repeal the regulation 830 Students with HIV Infection because 1.0 and 2.0 of the regulation are covered in existing state and federal law and 3.0 and 4.0 are technical assistance statements. The rights of students with HIV infection are covered by existing state and federal laws.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on March 3, 2003, in the form hereto attached as *Exhibit A*. Comments were received from the State Council for Persons with Disabilities and from the Governor's Advisory Council for Exceptional Citizens supporting the repeal of this regulation.

#### **II. Findings of Facts**

The Secretary finds that it is appropriate to repeal this regulation because rights of students with HIV infection are covered by existing state and federal laws.

#### **III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to repeal the regulation. Therefore, pursuant

to 14 *Del. C.* §122, the regulation attached hereto as *Exhibit "B"* is hereby repealed.

#### IV. Text and Citation

The text of the regulation amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be removed from the *Regulations of the Department of Education*.

#### V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 *Del. C.* § 122 on April 11, 2003. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 11th day of April 2003.

#### DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

#### ~~830 Students with HIV Infection~~

~~1.0 A student enrolled or entering a Delaware public school/program, or in an adult or apprenticeship program, with HIV infection shall be permitted to attend school unless the student, in the opinion of his/her physician, is at risk from communicable diseases (e.g., measles, chicken pox) present in the school or has other medically related problems.~~

~~2.0 A student entitled to a free public education pursuant to 14 *Del.C.* Ch. 2 and Ch. 31, with HIV infection who is removed for reasons stated in 1.0, shall be provided with an appropriate alternative education according to already established procedures.~~

~~3.0 Dissemination of the knowledge that a student has HIV infection is subject to State and Federal privacy laws and regulations.~~

~~4.0 Routine and standard procedures, etc. universal precautions, for handling all body fluids shall be utilized in every school and program.~~

### REGULATORY IMPLEMENTING ORDER

#### 877 Smoking

#### I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend regulation 877 Smoking by changing the name of the regulation to Tobacco Policy and adding additional Sections that reflect 16 *DELC* Chapter 29 The Clean Indoor Air Act and

guidelines recommended by the Center for Disease Control. The amended regulation expands the scope of the ban on the use and distribution of tobacco products.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on March 3, 2003, in the form hereto attached as *Exhibit A*. Comments were received from the State Council for Persons with Disabilities and from the Governors Advisory Council for Exceptional Citizens supporting the amendments to the regulation. Both groups did express some concern that the regulation may be "too sweeping". It is the Department's intent to eliminate tobacco use at all school sponsored functions regardless of location (inside or outside). It is vital that all tobacco use be banned on school property by all individuals.

A comment was also received from a school transportation supervisor about clarity of purpose in 1.1 and a phrase was added to indicate that even when buildings, grounds and school-leased or owned vehicles are used for other than student purposes no use or distribution of tobacco products may occur.

#### II. Findings of Facts

The Secretary finds that it is appropriate to amend this regulation in order to reflect 16 *DELC* Chapter 29 The Clean Indoor Air Act and the guidelines recommended by the Center for Disease Control.

#### III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend the regulation. Therefore, pursuant to 14 *Del. C.* §122, the regulation attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 *Del. C.* §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

#### IV. Text and Citation

The text of the regulation amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 *DE Admin. Code* § 877 in the *Regulations of the Department of Education*.

#### V. Effective Date of Order

The actions herein above referred to were taken by the Secretary pursuant to 14 *Del. C.* §122 on April 11, 2003. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 11th day of April 2003.

**Nature of the Proceedings:**

**DEPARTMENT OF EDUCATION**

Valerie A. Woodruff, Secretary of Education

**877 Tobacco Policy**

1.0 In order to improve the health of students and school personnel, each school district and charter school in Delaware shall have a policy which at a minimum:

1.1 Prohibits the use of or distribution of tobacco products in school buildings, on school grounds, in school-leased or owned vehicles [even when they are not used for student purposes,] and at all school affiliated functions.

1.2 Includes procedures for communicating the policy to students, school staff, parents/guardians/Caregivers, families, visitors and the community at large.

1.3 Makes provisions for or refers individuals to voluntary cessation education and support programs that address the physical and social issues associated with nicotine addiction.

2.0 The tobacco policy shall apply to:

2.1 Any building, property or vehicle leased, owned or operated by a school district, charter school or assigned contractor.

2.1.1 School bus operators under contract shall be considered staff for the purpose of this policy.

2.2 Any private building or other property including automobiles or other vehicles used for school activities when students and staff are present.

2.3 Any non-educational groups utilizing school buildings or other educational assets.

2.4 Any individual or a volunteer who supervises students off school grounds.

3.0 No school or school district property may be used for the advertising of any tobacco product.

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**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES**

**DIVISION OF LONG TERM CARE RESIDENTS  
PROTECTION**

Statutory Authority: 16 Delaware Code  
Section 3006A (16 Del.C. §3006A)

**ORDER**

**Regulations for Training and Certification for Nursing  
Assistants and Certified Nursing Assistants**

The Department of Health and Social Services, Division of Long Term Care Residents Protection (DLTCRP) initiated proceedings in accordance with 29 Delaware Code, Chapter 101 to amend the Regulations for Training and Qualifications for Nursing Assistants and Certified Nursing Assistants. On February 1, 2003, DLTCRP published proposed regulations in the Register of Regulations and received written comments in conjunction with public

DLTCRP reviewed and evaluated all the comments. As a result of that evaluation, the accompanying proposed regulations are being promulgated as final regulations. Three proposed regulations, 69.209, 69.210 and 69.211 are not being promulgated as final regulations, but will be the subject of a further public hearing to be scheduled at a later date. The evaluation of those comments pertaining to the regulations being published as final regulations is in the accompanying Summary of Evidence.

**Findings of Fact:**

The Department of Health and Social Services finds that the proposed regulations, as set forth in the attached copy, should be adopted as final regulations. Therefore, it is ordered that the proposed Regulations for Training and Qualifications for Nursing Assistants and Certified Nursing Assistants are promulgated effective May 10, 2003.

Vincent P. Meconi, Secretary, April 15, 2003

**Summary of Evidence:**

Comments on the proposed regulations have been received and evaluated as follows:

One comment expressed the view that Regulation 69.208 is a provider issue and should be addressed in nursing home regulations. That regulation relates directly to a section of the statute authorizing these regulations; and, therefore, is appropriately included in these regulations. In any event, while the number of that regulation is changed in the amended regulations, the text of the regulation remains as it appears in the previously adopted regulations.

Another comment expressed agreement with the proposed regulations, specifically Regulations 69.205, 69.206 and 69.207. Discussion about other aspects of CNA training took place at both public hearings, but those comments are not included in this summary of evidence because they did not pertain to the proposed regulations.

**\*Please note that no changes were made to the regulation as originally proposed and published in the February 2003 issue of the Register at page 925 (6 DE Reg. 925). Therefore, the final regulation is not being republished.**

Please refer to the February 2003 issue of the Register or contact the Division of Long Term Care Residents Protection.

## Response

### DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,  
Section 107 (31 Del.C. §107)

### ORDER

#### Transitional Medicaid Program

##### Nature Of The Proceedings:

Delaware Health and Social Services ("Department") / Division of Social Services / Medicaid/Medical Assistance Programs initiated proceedings to implement changes to the Division of Social Services Manual (DSSM) regarding the Transitional Medicaid Program. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the March 2003 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2003 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### Summary of Proposed Change: Transitional Medicaid Program

To ensure Federal Financial Participation (FFP) back to October 2002, a state plan amendment was submitted to the Centers for Medicare and Medicaid Services (CMS), on November 22, 2002, to continue Transitional Medicaid using the authority at **Section 1931(d)** of the Social Security Act. Section 1931(d) allows states to continue IV-A waivers if the waiver affects Medicaid eligibility even after the date the waiver would otherwise expire. CMS has rejected the plan amendment language because upon their determination only certain IV-A items can continue. As such, the language in the state plan was changed to indicate that DSS is using the authority at **Section 1931(b)(2)(C)** instead of Section 1931(d) to continue the IV-A waivers. To ensure compatibility with the plan amendment, the rules in the Division of Social Services Manual must change.

#### Summary Of Comments Received With Agency

The Delaware Developmental Disabilities Council (DDDC), the Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following comments:

DDDC, GACEC and SCPD endorse the concept of extending transitional Medicaid. However, it is unclear if DSS enjoys any discretion to extend the time period to 24 months for all families (both qualifying pre and post October 1, 2002). To the extent DSS has discretion, DDCS and SCPD prefer extending the time period to 24 months for all families.

**DSS Response:** Thank you for your endorsement. The commenters' preference to extend the time period is noted. Ultimately, however, the Department will make that determination using strategies that complies with necessary cost containment.

#### Findings Of Fact:

The Department finds that the proposed changes as set forth in the March 2003 Register of Regulations should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulations of the Medicaid/Medical Assistance Programs related to the Transitional Medicaid Program be adopted and shall be final effective May 10, 2003.

Vincent P. Meconi, Secretary, DHSS, April 15, 2003

#### DSS FINAL ORDER REGULATIONS #03 - 12

#### REVISIONS:

##### 15120.2 Financial Eligibility

TANF rules on income standards and methodologies (disregards, exclusions, allocations) apply to Section 1931 Medicaid except as provided in this section.

For Section 1931 Medicaid, there are two income tests to determine financial eligibility. The first test is a gross income test and the second is a net income test. For the gross income test, compare the family's gross income to 185% of the applicable standard of need. For the net income test, compare the family's net income to the applicable standard of need.

Financial eligibility for both applicant and recipient families will be calculated using the 30 and 1/3 disregard if applicable. This disregard allows the deduction of \$30 plus 1/3 of the remaining earned income after the standard allowance for work connected expenses is subtracted.

The \$30 plus 1/3 disregard is applied to earned income for four (4) consecutive months. If Medicaid under Section 1931 or employment ends before the fourth month, the earner is eligible for the disregard for four (4) additional months upon reapplication or re-employment.

When an earner's wages are so low (\$90 or less in the month) that the income is zero before any part of the \$30 plus 1/3 disregard can be applied, that month does not count as one of the four (4) consecutive months and the earner is eligible for the disregard for four (4) additional months.

After the \$30 plus 1/3 disregard has been applied for four (4) consecutive months, the 1/3 disregard is removed from the budget. The \$30 disregard continues to be deducted from earned income for eight (8) consecutive months. The \$30 disregard is not repeated if an individual stops working or 1931 Medicaid ends before the completion of the eight (8) consecutive months. If 1931 Medicaid ends and the family reapplies, the \$30 disregard from earned income is continued until the end of the original eight (8) consecutive months.

Unlike the \$30 plus 1/3 disregard which is dependent upon the family having sufficient earned income and being 1931 Medicaid recipients, the \$30 disregard is for a specific time period. This time period begins when the \$30 plus 1/3 disregard ends and is not dependent upon the family having earned income or 1931 Medicaid.

When an earner has received the \$30 and 1/3 disregard in four (4) consecutive months and the \$30 deduction has been available for eight (8) consecutive additional months, neither disregard can be applied to earned income until the individual has not received the 30 and 1/3 disregard for twelve (12) consecutive months.

All earned income is disregarded for the second and third months of eligibility.

All earned income is disregarded for recipients for 12 months after employment causes ineligibility.

Any diversion assistance provided does not count as income.

Resources are not counted for Medicaid under Section 1931.

### 15200 Transitional Medicaid

The Family Support Act of 1988, PL 100-485, mandated that effective April 1, 1990, states provide health care coverage known as Transitional Medical Assistance for up to twelve months for families who become ineligible for AFDC due to increased earnings, increased hours of employment, or loss of earned income disregards.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), P.L. 104-193, repealed the AFDC program and replaced it with a program of block grants to states for Temporary Assistance for Needy Families (TANF). Delaware implemented its TANF program, Delaware's A Better Chance Welfare Reform

Program (DABC), on March 10, 1997.

Prior to PRWORA, a family's eligibility for Transitional Medicaid was linked to receipt of AFDC. Under PRWORA, a family's eligibility for transitional Medicaid is linked to receipt of Medicaid under Section 15120, "Low Income Families with Children under Section 1931".

The eligibility group described in "Low Income Families with Children under Section 1931", will be referred to as "receiving Medicaid under Section 1931" throughout this section.

Delaware's welfare reform waiver, "Delaware's A Better Chance Welfare Reform Program" (DABC) ~~includes included~~ a modification to the length of the Transitional Medicaid period. The DABC waiver ~~extends extended~~ Transitional Medicaid benefits for up to 24 months. This waiver ~~expires expired~~ on September 30, 2002. ~~DSS will use the option under Section 1931(d) of the Social Security Act to continue the 24-month Transitional Medicaid extension.~~ DSS will use the option under Section 1931(b)(2)(C) of the Social Security Act to disregard all earned income for 12 months after employment causes ineligibility for a family under Section 1931. (See DSSM 15120.2.) Effective October 1, 2002, Transitional Medicaid coverage extends for up to one year. The year is divided into two periods of six months each. Families who establish eligibility for Transitional Medicaid prior to October 1, 2002, may be eligible for up to 24 months of Transitional Medicaid. Families who establish eligibility for Transitional Medicaid on or after October 1, 2002 may be eligible for up to 12 months of Transitional Medicaid.

Families must meet the initial eligibility requirements described in this section to receive the first ~~±~~ six months of coverage. Families can be eligible when their income exceeds either 185% of the standard of need or the standard of need.

To continue to receive Medicaid for the second ~~±~~ six months, the family's gross earned income less dependent care costs must be at or below 185% FPL. Dependent care costs are for the care of dependent children or incapacitated persons living in the home. Family income will be budgeted prospectively.

#### 15200.1 Initial Eligibility for First Six Months

At the time a family becomes ineligible for Medicaid under Section 1931 determine whether the family meets the following three requirements.

(Break in continuity of sections)

#### 15200.4 First Month Of Transitional Medicaid

Transitional Medicaid begins with the month of ineligibility for Medicaid under Section 1931 due to an increase in earned income or loss of earned income

disregards. The month of ineligibility for Medicaid under Section 1931 is the month in which the family's income exceeds either 185% of the standard of need or the standard of need.

Someone who is not timely in reporting the start of employment or increased wages could have their family's transitional benefits reduced so that they only receive the ~~24~~ 12 months of transitional coverage from when they should have been closed. But, we will not totally disqualify a family.

#### 15200.5 Eligibility During First ~~12~~ Six Month Period

The family will receive Transitional Medicaid without any reapplication for the first ~~12~~ six months. The family must be notified when they lose eligibility for Medicaid under Section 1931 that they are eligible for Transitional Medicaid and the reasons why the benefits could be terminated. DCIS will automatically notify Transitional Medicaid families and issue cards for the family members. The notice will include information about termination of benefits.

##### 15200.5.1 Child Living in the Home

To continue to receive Medicaid throughout the first ~~12~~ six-month period the following conditions must be met in addition to the initial eligibility requirements:

- there is a child living in the home.

The rules of Medicaid under Section 1931 are used to determine if a child is living in the home. When it is determined that a family no longer has a child living in the home, the family is no longer eligible under this program. The case must be reviewed to determine if the family members are eligible for Medicaid under another program.

#### 15200.6 Eligibility During Second ~~12~~ Six Month Period

~~A redetermination of eligibility must be completed at the end of the first 12-month period.~~

To continue to receive Medicaid during the second ~~12~~ six-month period, the conditions listed in 15200.6.1, 15600.6.2 and 15600.6.3 must be met in addition to the initial eligibility requirements.

##### 15200.6.1 Child Living in the Home

To continue to receive Medicaid throughout the second ~~12~~ six-month period there must be a child living in the home.

The rules of Medicaid under Section 1931 are used to determine if a child is living in the home. When it is determined that a family no longer has a child living in the home, the family is no longer eligible under this program. The case must be reviewed to determine if the family members are eligible for Medicaid under another program.

##### 15200.6.2 Employment of Caretaker Relative

To continue to receive Medicaid

throughout the second ~~12~~ six-month period a caretaker relative must be employed during each month unless good cause exists.

##### 15200.6.3 Limit on Gross Monthly Earnings

The family's gross monthly earnings (less the monthly costs of necessary dependent care) are at or below 185% of the Federal Poverty Level (FPL) and continue to be at or below 185% FPL throughout the second ~~12~~ six month period. The FPL is effective each July for Transitional Medicaid.

There are no limits on necessary dependent care costs. Prospective budgeting is used to determine family income. Do not add unearned income to earned income. Count the earned income of all family members living in the home who were members of the family unit the month the family became ineligible for Medicaid under Section 1931 and any individual who would be included in the caretaker relative's assistance unit if the family were now applying for Medicaid under Section 1931.

Exception: Do not count the earned income of a dependent child, regardless of student status.

#### 15200.7 ~~24~~ 12-Month Period of Eligibility

A family gets ~~24~~ 12 months of Transitional Medicaid from the month of ineligibility for Medicaid under Section 1931, even if they become eligible again for Medicaid under Section 1931. The clock on the ~~24~~ 12-month period does not stop running when eligibility for Medicaid under Section 1931 is reestablished. The ~~24~~ 12 months of Transitional Medicaid run concurrently with months of eligibility for Medicaid under Section 1931.

If the family again loses eligibility for Medicaid under Section 1931 for non-work reasons, the transitional benefit period is unaffected. If the family is terminated again for earned income reasons, a new transitional period may begin.

#### 15200.8 Termination of Eligibility

Eligibility for Transitional Medicaid may be terminated in either the first or second ~~12~~ six month period for the reasons described below.

##### 15200.8.1 First ~~12~~ Six-Month Period

Eligibility for Transitional Medicaid will be terminated during the first ~~12~~ six month period if the family no longer has a child living in the home. Use the definition for child as defined under Section 1931 Medicaid. A child is under age 18 or is under age 19 and who is still a full-time student in high school, GED, or equivalent program and will graduate prior to his or her 19th birthday. Emancipated minors are considered adults.

Eligibility will also be terminated if the family is found to have received Medicaid under Section 1931 "fraudulently" in the preceding six months. Fraud is defined at the end of this section.

##### 15200.8.2 Second ~~12~~ Six-Month Period

Eligibility for Transitional Medicaid

will be terminated if:

- the family no longer has a child living in the home
- the caretaker relative is no longer employed and good cause does not apply
- the family's monthly gross earned income minus dependent care costs exceeds 185% FPL.

We must explore eligibility for any other Medicaid program before Transitional Medicaid is terminated.

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## **DEPARTMENT OF LABOR**

### **DIVISION OF INDUSTRIAL AFFAIRS**

Statutory Authority: 29 Delaware Code,  
Section 8503(7) (29 **Del.C.** §8503(7))

### **ORDER**

#### **Nature of the Proceedings**

1. Pursuant to notice in accordance with 29 Del. C. § 10115, the Department of Labor proposed and published Clean Indoor Air Act Regulations in the Delaware Register of Regulations on March 1, 2003. A copy of the published proposed Regulations and Notice of Public Hearing is attached as Exhibit "A".

2. Pursuant to the Notice referenced above, a public hearing was held at 9:00 a.m. on Monday, March 24, 2003, in the Delaware Department of Public Safety Building, Division of Motor Vehicles 2<sup>nd</sup> Floor Conference Room, 303 Transportation Circle, Dover, Delaware.

3. As designated by the Secretary of Labor, Harold E. Stafford, Susan S. Anders, Administrator of the Office of Labor Law Enforcement, was present to receive testimony and evidence at the 9:00 a.m. March 24, 2003 hearing in Dover, Delaware. Ms. Anders stated that the public record would be held open following the hearing, until March 31, to receive further written submissions.

#### **Summary of the Evidence**

4. There was no testimony offered at the hearing nor were any written submissions received during the public comment period which remained open until March 31, 2003.

#### **Findings of Fact**

5. In the absence of testimony or submissions, a recommendation was made to the Secretary of Labor following the public hearing process to adopt the proposed Regulations.

#### **Conclusions of Law**

6. The Department of Labor recommends adoption of the proposed Clean Indoor Air Act Regulations pursuant to its authority in 29 Del. C. § 8503.

#### **Decision to Adopt**

7. It is the decision and order of the Department of Labor that the proposed Clean Indoor Air Act Regulations, a true and correct copy of which is attached hereto as Exhibit "B" are hereby **ADOPTED** effective date of May 11, 2003.

**SO ORDERED**, this 15<sup>th</sup> day of April, 2003.

Harold E. Stafford, Secretary of Labor

#### **~~Delaware Clean Indoor Air Act Regulations~~**

**~~Adopted: 9/15/95~~**

#### **~~I. Introduction.~~**

~~The General Assembly finds that it is in the best interest of the people of this State to protect non-smokers from involuntary exposure to environmental tobacco smoke in most indoor areas open to the public, in public meetings, food service establishments, and places of employment.~~

~~The General Assembly recognizes that a balance should be struck between the health concerns of nonconsumers of tobacco products and the need to minimize unwarranted governmental intrusion into and regulation of private spheres of conduct and choice with respect to the use or nonuse of tobacco products in certain designated public areas and in private places. Therefore, the General Assembly declares that the purpose of the "Clean Indoor Air Act" is to preserve and improve the health, comfort and environment of the people of this State by limiting exposure to tobacco smoke.~~

~~The Department of Labor has been charged with the enforcement of this Act as it applies to employers, employees, places of employment and the work place.~~

#### **~~H. Definitions~~**

~~The words, terms and phrases used in these Regulations, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning.~~

~~1. "Act" means 16 Del.C. §§2901 et seq., the "Clean Indoor Air Act".~~

~~2. "Employer" means any person, partnership, association, corporation or nonprofit entity that employs one or more persons, including the legislative, executive, and~~

judicial branches of state government; any county, city, town, village or political subdivision of the state, public improvement or special district, public authority, commission, agency or public benefit corporation; or any other separate corporate instrumentality or unit of state or local government.

C. "Place of employment" means any indoor area or portion thereof under the control of an employer in which employees of the employer perform services, but that is not generally accessible to the public.

D. "Smoke-free work area" means an indoor area in a place of employment where no smoking occurs. Such area shall be clearly designated and separate from any smoking area.

E. "Smoking" means the burning of a lighted cigarette, cigar, pipe or any other matter or substance that contains tobacco.

F. "Smoking area" means an enclosed indoor area in which smoking is permitted. Such smoking area shall be clearly designated and separate from any area in which smoking is not permitted. In a place of employment, the smoking area shall be separated from a smoke-free work area by walls or some other means equally effective in reducing the effects of smoke on the smoke-free work area, other than ventilation systems or air cleaning devices.

G. "Work area" means an area in a place of employment where one or more employees are routinely assigned and perform services for their employer.

### **III. Requirements In Places Of Employment.**

A. **Written Smoking Policy.** Each employer shall adopt and implement a written smoking policy that contains at least the following:

1. the provision of a work area where no smoking occurs for each employee who requests one;
2. a notice that the employer is not required to incur any expense to make structural or physical modifications to accommodate individual preferences. If a satisfactory accommodation cannot be reached, the preferences of non-smoking employees shall prevail;
3. the provision that the employer may set aside a work area for smoking;
4. the provision of non-smoking areas in employee cafeterias, lunch rooms and lounges. The non-smoking areas in employee cafeterias and lunchrooms shall be sufficient to meet employee demand;
5. a procedure to resolve employee disputes and objections arising under the smoking policy; and
6. a statement providing that the employer will not retaliate or take any adverse personnel action against any employee exercising his or her rights under the Act.

B. **Posting of Smoking Policy.** Employers shall post the smoking policy in normal employee posting areas.

### **IV. Sign Posting Requirements.**

"Smoking" or "No Smoking" signs, or the international "No Smoking" symbol (which consists of a pictorial representation of a burning cigarette enclosed in a circle with a bar across it) shall be prominently posted and properly maintained where smoking is regulated by the provisions of the Act. These signs shall be posted and maintained by the employer, owner, operator, manager or other person having control of the indoor area of the place of employment.

### **V. Violations And Administrative Penalties.**

1. **Violations.** The following acts constitute violations of these regulations:

1. permitting smoking in an area which has been designated as a non-smoking area;
2. failing to post a non-smoking sign as required by Section IV;
3. willfully destroying or defacing a required posted sign;
4. failing to adopt a smoking policy as set forth in section III, Subsection A; and
5. failing to designate a non-smoking area as required by these regulations.

2. **Administrative Penalties.** Any person who violates any provision of these regulations shall be subject to an administrative penalty of \$25 for the first violation and not less than \$50 for each subsequent violation.

### **VI. Enforcement.**

A. **Complaint.** Any person may file a complaint with the Office of Labor Law Enforcement alleging a violation of any provision of this section. The Complaint shall be in writing, and shall set forth the specifics of any alleged violation of the Act. The Complaint shall be directed to the Administrator of the Office of Labor Law Enforcement.

B. **Enforcement Actions.** Upon complaint to the Office of Labor Law Enforcement, the Administrator will assign the Complaint for investigation to a Labor Law Enforcement Specialist. The Office of Labor Law Enforcement, upon a determination that a violation has occurred, shall enforce the provisions of this section of the Act as follows:

1. The Office of Labor Law Enforcement may serve notice requiring the prompt correction by the owner, proprietor, manager or other person having the authority to manage and control any place of employment, of any violation of this section. Such notice will give a specified date on which compliance is required. Follow-up action will be taken to ensure compliance.

2. If prompt corrective action is not taken in accordance with the foregoing notice, the Office of Labor

Law Enforcement may issue to any person a citation for payment of administrative penalties as outlined in Section V, Subsection B.

C. Waiver of Provisions. The Director of the Division of Industrial Affairs, upon written request, may waive the provisions of these Regulations, if it is determined that there are compelling reasons to do so, providing that such waiver will not significantly affect the health and comfort of nonconsumers of tobacco products. The Director shall make a decision as to whether a waiver should be granted within thirty (30) days after receipt of the written request. This waiver may be revoked by the Director at any time should the Director believe that there are no longer compelling reasons for the waiver.

#### **VII. Preemption And Severability.**

A. Preemption. The provisions of 16 Del.C. §§2901 et seq. and the provisions of these Regulations shall preempt and supersede any provisions of any municipal or county ordinance or regulation on the same subject which were enacted or adopted after the effective date of the Act.

B. Severability. If any provision of the "Clean Indoor Air Act" or these Regulations, or any portion thereof or the application or method of implementation is held invalid, the remainder of the Act and these Regulations shall not be affected by such holding and shall remain in full force and effect.

#### **VIII. Subsequent Modification Of Regulations.**

The Secretary of Labor may, upon her/his own motion or upon the written request of any member of the public setting forth reasonable grounds therefore, revoke or modify these regulations, after an opportunity has been given to members of the public to present their views on the proposed changes. These regulations shall take effect thirty (30) days after the date of adoption.

Approved and adopted this 15<sup>th</sup> day of September, 1995  
Darrell J. Minott, Secretary of Labor

**Proposed Regulations for Public Consideration:** Title 16- Health and Safety, Chapter 29-Clean Indoor Air Act, affecting places of employment within the jurisdiction of the Delaware Department of Labor as authorized by 16 Del. C. § 2906.

**Department of Labor Policy:** The legislative intent of the Clean Indoor Air Act is to protect nonsmokers from involuntary exposure to environmental tobacco smoke, not only in most indoor public places which fall within the jurisdiction of the Department of Health and Social Services, but also indoor places of employment which fall within the

jurisdiction of the Department of Labor. Generally, the Act restricts smoking in any indoor workplace not exempt by statute, regulation or waiver.

**Department of Labor Jurisdiction:** The Department of Labor is charged with the enforcement of this Act as it applies to employers, employees, places of employment and the workplace. The Act authorizes the Department of Labor to impose administrative penalties of \$100 dollars for the first offense but not less than \$250 for subsequent violations when appropriate. The Department shall cite such penalties against the employer, owner, operator, manager or other individual having control of the workplace, who knowingly permits smoking therein.

**Acknowledged Workplace Exemptions:** In attempting to provide clarification on exempt status, the Department may propose regulations acknowledging additional workplace exemptions consistent with the legislative intent under the Act at 16 Del. C. § 2904. The Department hereby proposes to recognize "Private Clubs" as defined herein, as beyond the jurisdiction of the Department of Labor as inapplicable or exempt from enforcement under the Act.

**"Private Club Exemption"** means any club or organization that does not permit the general public to access its facilities or activities. Access is denied to anyone who does not agree or adhere to the rules of membership. In order to be considered a private club or organization for purposes of the Clean Indoor Air Act, the establishment must adhere to all of, but not limited to, the following criteria:

- a. Have a permanent mechanism to carefully screen applicants for membership on subjective rather than objective factors;
- b. Limits access and use of facilities, services, and activities of the organization to members and guests of the members;
- c. Is controlled by its membership and operates solely for the benefit and pleasure of its members; and
- d. Advertises exclusively and only to its members, excluding membership drives.

**"Workplace"** means a "work area" as defined by the statute.

**Enforcement by the Department of Labor:** The Department's administrative process is as follows: a) Complaint: Any employee alleging a workplace violation of the Clean Indoor Air Act, shall report such violations which has or is occurring, in writing to the Office of Labor Law Enforcement, Division of Industrial Affairs, 4425 North Market Street, Wilmington, DE 19802.

- a) Enforcement Actions: The Department shall

investigate all written complaints to determine if a violation has or is occurring. The Department may investigate alleged violation from any source. The Office of Labor Law Enforcement may conduct an inspection of any workplace where there is a suggestion of an employer's non-compliance with the Clean Indoor Air Act. The Department shall take such steps as is necessary to bring about immediate correction and future compliance.

b) Administrative Penalties: If the Office of Labor Law Enforcement determines that the employer knowingly failed or refused to comply with the Act's workplace restrictions, the Officer shall provide written notice of such determination. The notice shall include a date certain for compliance with future monitoring of the workplace with inspections. If prompt corrective action is not taken in accordance with the Department's notice, the Department shall serve a citation for payment of the administrative penalty upon the person having control of the workplace where the violation occurred.

c) Right of Appeal of the Penalty: Upon receipt of a citation with assessment of administrative penalties, the person named and served, shall have thirty days from service to appeal the determination to the Secretary. The appeal must be in writing to the Secretary of Labor, 4425 North Market Street, Wilmington DE 19802.

Severability.

If any provision of these Regulations, or any portion thereof or the application or method of implementation is held invalid, the remainder of these Regulations shall not be affected by such holding and shall remain in full force and effect.

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**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL**

**DIVISION OF AIR AND WASTE MANAGEMENT  
AIR QUALITY MANAGEMENT SECTION**

Statutory Authority: 7 Delaware Code, Chapter 60  
(7 Del.C. Ch. 60)

**ORDER No. 2003-F-0021**

**Summary Of Evidence And Information**

Pursuant to due notice vol. 6, issue 9 DE Register of Regulations, 1192-1194 (3/1/03), The Department of Natural Resources and Environmental Control proposes to leave unchanged Tidal Finfish Regulation 7 pertaining to striped bass size limits and creel or daily harvest limits, and change Regulation 10 pertaining to weakfish size limits, creel limits,

and seasonal commercial net closures. The purpose of these amended regulations are to come into compliance with Amendment 4 of the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Weakfish.

A public hearing was held on March 21, 2003 to take comments on proposed amendments to Regulations 7 and 10. Comments were taken that evening and during the remainder of the comment period which remained open until March 31, 2003.

**Findings Of Fact**

- 903(e)(2)(a) 7 Delaware Code authorizes the Department of Natural Resources and Environmental Control (DNREC) to promulgate regulations concerning species of finfish that spend part or all their life cycle within the tidal waters of the state provided that such regulations are consistent with an interstate fisheries management plan developed for the protection and conservation of said species of finfish.
- There are interstate fisheries management plan amendments recently approved by the Atlantic States Marine Fisheries Commission for weakfish and striped bass.
- The latest amendment of the weakfish plan provides for minimum size options from 12 inches up to 15 inches or greater. The allowable daily harvest limit increases from 7 per day at 12 inches up to a maximum of 10 fish per day at any minimum size equal to or greater than 15 inches.
- On March 6, 2003, the New Jersey Marine Fisheries Council voted to approve 13 inches and 8 weakfish per day as their preferred limits for 2003.
- Although the majority of the comments received relative to weakfish favored a minimum size of 14 or 15 inches, several Delaware speakers at the hearing and some of the e-mail respondents stressed the importance of Delaware being consistent with New Jersey because of our shared waters.
- There were no comments received relative to the proposed dates for when gill nets would have to be removed from Delaware Bay to remain in compliance with Amendment 4 to the Weakfish Fishery Management Plan.
- In regard to striped bass, 10 comments were received in favor of option 1, the present slot limit included in Tidal Finfish Regulation 7, and three in favor of option 2; that is two fish per day at a minimum size of 28 inches. No one favored option 3, maintaining the present slot limit if it means we will have to reduce our open season length in order

to remain in compliance with Amendment 6 to the Atlantic Striped Bass Fishery Management Plan.

**Conclusions**

I have reached the following conclusions:

- Delaware’s recreational minimum size and daily harvest limit for striped bass should remain as listed for 2003, namely one fish that measures no less than 24 inches in total length or more than 28 inches in total length and one that measure no less than 28 inches in total length per person per day. This minimum size and daily harvest limit may need to be re-considered for 2004, pending any additional amendments or addendum to the Atlantic States Marine Fisheries Commission Atlantic Striped Bass Fishery Management Plan. Therefore Tidal Finfish Regulation 7 should remain unchanged for 2003.
- Delaware’s recreational minimum size and daily harvest limit for weakfish should be adjusted to 13 inches total length, coupled with a daily harvest limit of 8 weakfish per day in order to be consistent with the state of New Jersey. The dates during which it shall be illegal to fish with any gill net in Delaware Bay or the Atlantic Ocean or to take and reduce to possession any weakfish from the Delaware Bay or Atlantic Ocean with any fishing equipment other than a hook and line shall be every weekend day in both May and June (defined as 12:01 AM on Friday through midnight Sunday), plus contiguous weekdays (defined as 12:01 AM Monday through midnight Thursday) at the beginning of May and the end of June, such that the total number of closure days add up to 34 days.

**ORDER**

It is hereby ordered this 4th day of April in the year 2003 that amendments to Tidal Finfish Regulation 10, copies of which are attached hereto, are adopted pursuant to 7 Del. C. 903(e)(2)(a) and are supported by the Department’s findings of evidence and testimony received. This Order shall become effective on May 10, 2003.

John A. Hughes, Secretary,  
Department of Natural Resources  
and Environmental Control

**TIDAL FINFISH REGULATION 10. WEAKFISH SIZE LIMITS; POSSESSION LIMITS; SEASONS.**

a) It shall be unlawful for any person to possess

weakfish *Cynoscion regalis* taken with a hook and line, that measure less than ~~fourteen (14)~~ **[thirteen (13)]** inches, total length. ~~**[Note: size limit to be determined in combination with creel limit.]**~~

b) It shall be unlawful for any person to whom the Department has issued a commercial food fishing license and a food fishing equipment permit for hook and line to have more than ~~fourteen (14)~~ **[eight (8)]** weakfish in possession during the period beginning at 12:01 AM on May 1 and ending at midnight on October 31 except on four specific days of the week as indicated by the Department on said person’s food fishing equipment permit for hook and line. ~~**[Note: creel limit to be determined in combination with size limit.]**~~

c) It shall be unlawful for any person, who has been issued a valid commercial food fishing license and a valid food fishing equipment permit for equipment other than a hook and line to possess weakfish, lawfully taken by use of such permitted food equipment, that measure less than twelve (12) inches, total length.

d) It shall be unlawful for any person, except a person with a valid commercial food fishing license, to have in possession more than ~~fourteen (14)~~ **[eight (8)]** weakfish, not to include weakfish in one’s personal abode or temporary or transient place of lodging. A person may have weakfish in possession that measure no less than twelve (12) inches, total length, and in excess of ~~fourteen (14)~~ **[eight (8)]** if said person has a valid bill-of-sale or receipt for said weakfish that indicates the date said weakfish were received, the number of said weakfish received and the name, address and signature of the commercial food fisherman who legally caught said weakfish or a bill-of-sale or receipt from a person who is a licensed retailer and legally obtained said weakfish for resale. ~~**[Note: creel limit to be determined in combination with size limit.]**~~

e) It shall be unlawful for any person to fish with any gill net in the Delaware Bay or Atlantic Ocean or to take and reduce to possession any weakfish from the Delaware Bay or the Atlantic Ocean with any fishing equipment other than a hook and line during the following periods of time:

- ~~Beginning at 12:01 AM on May 1, 2002 and ending at midnight on May 12, 2001;~~
- ~~Beginning at 12:01 AM on May 17, 2002 and ending at midnight on May 19, 2002;~~
- ~~Beginning at 12:01 AM on May 24, 2002 and ending at midnight on May 26;~~
- ~~Beginning at 12:01 AM on May 31, 2002 and ending at midnight on June 2, 2002;~~
- ~~Beginning at 12:01 AM on June 7, 2002 and ending at midnight on June 9, 2002;~~
- ~~Beginning at 12:01 AM on June 14, 2002 and ending at midnight on June 16, 2002;~~
- ~~and beginning at 12:01 AM on June 24, 2002 and ending at midnight on June 30, 2002.~~

Every weekend day (defined as 12:01 AM on Friday through midnight Sunday) in both May and June, plus contiguous weekdays (defined as 12:01 AM Monday through midnight Thursday) at the beginning of May and the end of June, such that the total number of closure days add up to thirty four (34) days. The exact dates of closures each year shall be mailed in advance to the affected public and published annually in the Delaware Fishing Guide.

f) The Department shall indicate on a person's food fishing equipment permit for hook and line four (4) specific days of the week during the period May 1 through October 31, selected by said person when applying for said permit, as to when said permit is valid to take in excess of ~~fourteen (14)~~ **[eight (8)]** weakfish per day. These four days of the week shall not be changed at any time during the remainder of the calendar year. ~~[(Note: creel limit to be determined in combination with size limit).]~~

g) It shall be unlawful for any person with a food fishing equipment permit for hook and line to possess more than ~~fourteen (14)~~ **[eight (8)]** weakfish while on the same vessel with another person who also has a food fishing equipment permit for hook and line unless each person's food fishing equipment permit for hook and line specifies the same day of the week in question for taking in excess of ~~fourteen~~ **[fourteen (14) eight (8)]**. ~~[(Note: creel limit to be determined in combination with size limit).]~~

### DIVISION OF WATER RESOURCES

Statutory Authority: 7 Delaware Code,  
Section 103(a)(1) and (b),  
(7 Del.C. 103(a)(1) and (b))

Secretary's Order No.: 2003-W-0017

### Amendments to the Delaware Regulations Governing the Control of Water Pollution

#### I. Background

The Department of Natural Resources and Environmental Control held a public hearing on August 29, 2000 to receive comments on proposed amendments to the Department's **Regulations Governing the Control of Water Pollution**. Public notices advertising the hearing were published in two newspapers, the **Delaware State News** and **The News Journal**, on Wednesday, August 2, 2000 and on Sunday, August 6, 2000. The proposed amendments and a notice advertising the August 29, 2000 public hearing were published in the **Delaware Register of Regulations** on July 1, 2000.

The majority of the proposed amendments focus on the

Department's issuance and administration of NPDES permits in the State of Delaware. ("NPDES" is an acronym for the "National Pollutant Discharge Elimination System", a federal regulatory program designed to control "point source" discharges of pollutants to the nation's waters. Although Congress entrusted the responsibility for administering the NPDES Program to the United States Environmental Protection Agency, it provided for the delegation of that authority to the individual states. EPA delegated its authority to issue and administer NPDES permits to the State of Delaware in 1974.) In addition, the Department proposed updates to its regulations for the construction and operation of wastewater/pollution control facilities and proposed to adopt regulations that formalize a periodic assessment of municipal treatment plant performance and infrastructure needs. Regulations were also proposed to address administrative procedures for evaluating and issuing a State certification that an activity will be conducted in such a manner that won't violate the applicable surface water quality criteria or standards. Such certification is required under federal law for any activity that involves a federal license or permit.

The Department responded to the comments entered into the public record in a Response Document dated March 8, 2002. The Hearing Officer's Report to the Secretary recommended adoption of the revisions as discussed in the Response Document. On August 26, 2002, Secretary's Order #2002-W-0043 was issued, adopting the amended Regulations as proposed with the revisions outlined in the March 8, 2002 Response Document.

Under 29 Del. C., no agency may adopt a regulation if more than 12 months have elapsed since the close of the public comment period. Therefore, the regulations were published in their modified form and the public given an additional opportunity to submit comments. The Secretary's Order and the modified amendments were published in the **Delaware Register of Regulations** on October 1, 2002.

One party submitted written comments before the close of the second public comment period. The Department carefully considered and responded to those comments in a Response Document dated March 15, 2003. In addressing the comments submitted, the Department modified the proposed revisions. None of the changes are substantive. All are consistent with the Department's original purpose and intent.

#### II. Findings and Conclusions

1. Proper notices of the proposed amendments were provided as required by law.

2. The Department has carefully considered all relevant public comments regarding this proposed rulemaking, and has provided a reasoned analysis and sound

conclusions regarding each one as reflected in the two Response Documents, which are incorporated into this Order. The reasoning and conclusions with respect to each issue are hereby incorporated into this Order as formal findings.

3. This rulemaking, together with the revisions made as a result of the public comment process, will provide a significant water quality benefit for the State of Delaware, while being sensitive to the practical implications for the regulated community.

### **III. Order**

This Order affirms the Findings and Conclusions from Secretary's Order #2002-W-0043. In view of the above findings, it is hereby ordered that the Regulations Governing the Control of Water Pollution be amended and promulgated in the manner required by law to reflect the final version of these amendments, attached hereto, which includes those published in the October 1, 2002 Register of Regulations with the appropriate revisions as discussed in the Response Document, dated March 15, 2003.

### **IV. Reasons**

This rulemaking represents careful, deliberate and reasoned action by this agency to address shortcomings in its existing regulations and to maintain consistency with evolving federal requirements, while taking into account the practical interests and concerns of the regulated community.

These amendments shall become effective on May 14, 2003.

John A. Hughes, Secretary

**\* PLEASE NOTE: DUE TO THE LENGTH OF THE FINAL REGULATION AND SPACE CONSIDERATIONS, THE FULL TEXT OF THE REGULATION IS NOT BEING REPRODUCED HERE. THERE ARE TWO VERSIONS AVAILABLE FROM THE WEBSITE.**

[ADOBE PDF VERSION](#)

[HTML VERSION](#)

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## **STATE EMPLOYEE BENEFITS COMMITTEE**

Statutory Authority: 29 Delaware Code,  
Sections 5210(4), 9602(b)(4)  
(29 Del. C. §§5210(4), 9602(b)(4))

### **ORDER ADOPTING RULES AND REGULATIONS**

**AND NOW**, this 16th day of April, 2003, in accordance

with 29 Del. C. §10118 and for the reasons stated hereinafter, the State Employee Benefits Committee of the State of Delaware (hereinafter "the Committee") enters this Order adopting an amendment to the Group Health Care Insurance Eligibility and Coverage Rules.

### **I. Nature of the Proceedings**

Pursuant to the Committee's authority under 29 Del.C. §§5210(4) and 9602(b)(4), the Committee proposed to amend existing Group Health Care Insurance Eligibility and Coverage Rule 7.01 in order to establish the date that a public school or higher education employee (less than 12 month employee) retains coverage when the term of employment extends to the last scheduled work day of the school year. Notice of the public hearing to consider the proposed amendment to the Group Health Care Insurance Eligibility and Coverage Rules was published in the Delaware *Register of Regulations* and two Delaware newspapers of general circulation, in accordance with 29 Del.C. §10115 (Exhibit A). The text of the proposed amendment is attached as Exhibit B. The public hearing was held on February 28, 2003 at 1:00 p.m. in Dover, Delaware, as duly noticed, and at which a quorum of the Committee was present. The Committee deliberated and voted on the proposed amendment to the Group Health Care Insurance Eligibility and Coverage Rules. This is the Committee's Decision and Order ADOPTING the amendment to the Rules and Regulations as proposed.

### **II. Evidence and Information Submitted**

The Committee received no written comments in response to the notice of intention to adopt the proposed revisions to the Group Health Care Insurance Eligibility and Coverage Rules. At the February 28, 2003 hearing, the Committee received oral comments from Ms. Jill Floore of the Budget Office and Ms. Debbie McCall of the State Personnel Office.

Ms. McCall read and explained the proposed amendment. She stated that the amendment was the result of cooperation and collaboration between the parties involved.

Ms. Floore stated that the change to Rule 7.01 that would address an issue regarding public school employees and the maintenance of coverage through the summer months. The proposed amendment would conform the Committee Rules to existing practice.

### **III. Findings of Fact and Conclusions**

1. The public was given notice of the proposed amendment to the Group Health Care Insurance Eligibility and Coverage Rules and offered an adequate opportunity to provide the Committee with comments.

2. The proposed amendment to the Group Health Care Insurance Eligibility and Coverage Rules is necessary to clarify current rules and establish certain other requirements for eligibility and coverage. The proposed amendments will assist public school and higher education employees in understanding the requirements regarding group health care insurance eligibility and coverage.

3. The Committee concludes that it has statutory authority to promulgate rules and regulations for the general administration of the employee benefit coverages pursuant to 29 *Del.C.* §9602(b)(4). The Committee further concludes that it has statutory authority to adopt rules 2 and regulations for the general administration of the State employees group health insurance program in accordance with 29 *Del.C.* §5210(4).

4. For the foregoing reasons, the Committee concludes that it is necessary to adopt the proposed amendment to its Rules and Regulations.

contributions for any optional coverage selected, coverage will revert to "Basic" coverage on the first day of the month for which the Employee failed to make the required contribution. If an employee works one day in the month in which they terminate, they shall earn state share for the entire month.

**PLEASE NOTE: AS THE REMAINDER OF THE REGULATION IS NOT BEING MODIFIED IT IS NOT BEING PUBLISHED.**

#### IV. Decision and Order to Adopt Amendments

**NOW, THEREFORE**, by unanimous vote of a quorum of the Committee, **IT IS ORDERED**, that the amendment to Rule 7.01 of Group Health Care Insurance Eligibility and Coverage Rules is approved and adopted in the exact text as set forth in Exhibit B attached hereto. The effective date of this Order is ten (10) days from the date of its publication in the Delaware *Register of Regulations* pursuant to 29 *Del. C.* § 10118(g).

BY ORDER OF THE STATE EMPLOYEE BENEFITS COMMITTEE

(As authenticated by a quorum of the Committee)

Lisa Blunt-Bradley, Chair, State Personnel Director  
David Singleton, Secretary of Finance  
Jack Markell, State Treasurer  
Russ Larson, Controller General  
Donna Lee Williams, Insurance Commissioner  
Jennifer Davis, Budget Director

**State Of Delaware**  
**State Employee Benefits Committee**  
**Group Health Care Insurance**  
**Proposed Revisions To Eligibility And Coverage Rules**

7.01 Coverage ends on the last day of the month in which the employee terminates employment. A public school or higher education employee (less than 12 month employee) whose employment during a school year continues through the last scheduled work day of that school year shall retain coverage through August 31 of the same year so long as the required contributions have been made. In the event an Employee fails to make the required

STATE OF DELAWARE  
**EXECUTIVE DEPARTMENT**  
DOVER

**EXECUTIVE ORDER  
NUMBER FORTY**

**RE: CONTINUING AND REORGANIZING THE  
INTERAGENCY COUNCIL ON ADULT  
LITERACY**

**WHEREAS**, the demands of a changing society are rapidly raising the level of literacy in reading, numeration, communication, problem solving and use of technology essential for effective participation in family, employment and community matters; and

**WHEREAS**, for Delaware to be a literate State, a broad spectrum of services must be designed and provided to meet the literacy needs of Delawareans regardless of age; and

**WHEREAS**, the literacy level of parents and/or guardians has a direct impact on the literacy level of a child; and

**WHEREAS**, attaining a literate Delaware is imperative to ensure the State's continued economic competitiveness as well as to provide an enhanced quality of life; and

**WHEREAS**, a literate Delaware requires commitment, coordination, and collaboration between the public and private sectors; and

**WHEREAS**, in 1990 the State convened an Adult Literacy Summit in which leaders of government, business, education, general community and industry in Delaware met in an effort to address the issues associated with adult education; and

**WHEREAS**, on September 17, 1991, by Executive Order No. 98, then-Governor Michael N. Castle created the Interagency Council on Adult Literacy (the "ICAL") in order to facilitate literacy initiatives in the State; and

**WHEREAS**, the Minner-Carney administration has worked supportively with the ICAL and wishes to encourage the organization to continue their service to the residents of Delaware; and

**WHEREAS**, it is appropriate to continue the ICAL, and that its structure, organization and purposes be modified to reflect and account for changes since the adoption of Executive Order No. 98;

**NOW, THEREFORE, I, RUTH ANN MINNER**, by virtue of the authority vested in me as Governor of the State of Delaware do hereby order and declare as follows:

1. The Interagency Council on Adult Literacy is reconstituted and continued. The ICAL shall consist of not more than fifteen (15) members, each of whom shall be appointed by and serve at the pleasure of the Governor. Membership on the ICAL shall include the following

persons:

- a. A Chairperson;
- b. One representative from each of the following State agencies: the Department of Education, the Department of Health and Social Services, the Department of Labor, the Department of Correction, the Delaware Economic Development Office, the Department of State, the Delaware State Housing Authority;
- c. One representative of the Organization of Adult Alumni and Students in Service (OAASIS);
- d. One representative of the Delaware Association for Adult and Community Education (DAACE);
- e. At least one President from one of Delaware's institutions of higher education;
- f. The Chairman of the Delaware Coalition for Literacy, Inc. (DCL).

Members of the ICAL are authorized to select officers from among the ICAL's regular members.

2. In addition to the above regular members of the ICAL, there may be advisory members of the ICAL, who may be appointed from among various educational organizations, groups that provide basic education and/or literacy skills, students and consumers of such educational programs and other special members that represent specific priority populations or areas of expertise. Such advisory members of the ICAL shall be appointed by the Chairperson. In appointing advisory members, the Chairperson shall ensure diverse representation of educational programs and consumers throughout the State.

3. The ICAL shall be responsible for the development of an action plan to advance literacy within the State. In furtherance of that objective, the ICAL shall:

- a. Coordinate and convene a literacy summit to develop recommendations for increasing literacy;
- b. Develop an adult and family literacy policy;
- c. Recommend appropriate literacy-related legislation;
- d. Coordinate policy and resources with other agencies regarding delivery of services for existing and future programs;
- e. Review and recommend target populations;
- f. Gather and analyze literacy data;
- g. Monitor and evaluate literacy-related activities in an effort to attain literacy goals;
- h. Publicly highlight the on-going literacy successes and challenges in Delaware; and
- i. Devise a plan to provide access to literacy services.

4. The ICAL shall publish an annual report on its progress, to be provided to the Governor and members of the

General Assembly, on or about September 8 of each year, International Literacy Day.

5. Executive Order No. 98, entered September 17, 1991, is hereby rescinded.

Approved and Adopted, this 27th Day of March, 2003.

Ruth Ann Minner  
Governor

Attest:  
Harriet Smith Windsor  
Secretary of State

**STATE OF DELAWARE**  
**EXECUTIVE DEPARTMENT**  
**DOVER**

**EXECUTIVE ORDER**  
**NUMBER FORTY-ONE**

**RE: REVISED REALLOCATION OF STATE PRIVATE ACTIVITY BOND VOLUME CAP FOR CALENDAR YEAR 2002 AND INITIAL SUBALLOCATION OF STATE PRIVATE ACTIVITY BOND VOLUME CAP FOR CALENDAR YEAR 2003**

**WHEREAS**, pursuant to 29 *Del. C.* §5091, the State's private activity bond volume cap ("Volume Cap") for 2002 under §103 of the Internal Revenue Code of 1986 (the "Code") has been allocated among various state and local government issuers; and

**WHEREAS**, on January 29, 2003, I entered Executive Order Number Thirty-Six, reallocating Volume Cap for calendar year 2002 and making an initial sub-allocation of Volume Cap for calendar year 2003; and

**WHEREAS**, published cost of living adjustments for 2003 have caused the Volume Cap for 2003 to be further adjusted; and

**WHEREAS**, pursuant to Executive Order Number Twenty-Seven, \$112,500,000 of the Volume Cap for 2002 which had been allocated to the State of Delaware was further sub-allocated between the Delaware Economic Development Authority and the Delaware State Housing Authority; and

**WHEREAS**, the allocation of Volume Cap in Executive Order Number Twenty-Seven is subject to modification by further Executive Order; and

**WHEREAS**, the State's Volume Cap for 2002 and 2003 is allocated among the various State and local government

issuers by 29 *Del. C.* §5091(a); and

**WHEREAS**, Kent County has reassigned \$22,500,000 of its unallocated Volume Cap for 2002 to the State of Delaware; and

**WHEREAS**, the Delaware Economic Development Authority has \$56,250,000 of Volume Cap for 2002, previously allocated by Executive Order Number Twenty-Seven; and

**WHEREAS**, pursuant to 29 *Del. C.* §5091(b), the State's \$114,290,000 Volume Cap for 2003 is to be sub-allocated by the Governor between the Delaware State Housing Authority and the Delaware Economic Development Authority; and

**WHEREAS**, the Secretary of Finance recommends (i) that the \$22,500,000 unallocated Volume Cap for 2002 reassigned to the State of Delaware by Kent County be sub-allocated to the Delaware State Housing Authority for carry forward for use in future years; and (ii) that the \$56,250,000 of Volume Cap for 2002 allocated to the Delaware Economic Development Authority pursuant to Executive Order Number Twenty-Seven be reallocated to the Delaware State Housing Authority for carry forward for use in future years; and (iii) that the State's Volume Cap for 2003 of \$114,290,000 be allocated equally between the Delaware State Housing Authority and the Delaware Economic Development Authority; and

**WHEREAS**, the Chairperson of the Delaware Economic Development Authority and the Chairperson of the Delaware State Housing Authority concur in the recommendations of the Secretary of Finance.

**NOW, THEREFORE, I**, Ruth Ann Minner, by the authority vested in me as Governor of the State of Delaware, do hereby declare and order as follows:

1. Section 2 of Executive Order Number Thirty-Six and the associated recitals are hereby revoked in their entirety.

2. The \$22,500,000 of unallocated Volume Cap for 2002 that has been reassigned by Kent County to the State of Delaware is hereby sub-allocated to the Delaware State Housing Authority for carry forward use, in addition to the \$56,250,000 previously sub-allocated to the Delaware State Housing Authority for 2002 under Executive Order Number Twenty-Seven. Additionally, the \$56,250,000 of Volume Cap for 2002 previously allocated to the Delaware Economic Development Authority is allocated to the Delaware State Housing Authority, providing the Delaware State Housing Authority with a total carry forward amount of \$135,000,000.

3. The \$114,290,000 allocation to the State of Delaware of the 2003 Volume Cap is hereby sub-allocated: \$57,145,000 to the Delaware State Housing Authority and \$57,145,000 to the Delaware Economic Development Authority.

4. The aforesaid sub-allocations have been made with

due regard to actions taken by other persons in reliance upon previous sub-allocations to bond issuers.

Approved and Adopted, this 27th Day of March, 2003.

Ruth Ann Minner  
Governor

Attest:  
Harriet Smith Windsor  
Secretary of State

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**STATE OF DELAWARE**  
**EXECUTIVE DEPARTMENT**  
**DOVER**

**EXECUTIVE ORDER**  
**NUMBER FORTY-TWO**

**RE: TASK FORCE ON FINANCIAL OPTIONS**  
**FOR THE CITY OF WILMINGTON**

**WHEREAS**, since assuming office in January 2001, Mayor James M. Baker has taken a series of responsible actions to improve the finances of the City of Wilmington; and

**WHEREAS**, last year Mayor Baker asked the members of the Wilmington Economic and Financial Advisory Council (WEFAC) to work with the nationally recognized municipal strategic consulting firm Public Financial Management (PFM) to conduct an independent review of the City's finances; and

**WHEREAS**, Mayor Baker and City Council President Theodore Blunt have received the findings of the WEFAC/PFM study which include a five-year financial forecast for the City and a series of potential revenue generation options; and

**WHEREAS**, the WEFAC/PFM report finds that "...strong local action has both contained the City's costs and increased its locally generated revenues. Nonetheless, Wilmington's future holds budgetary crisis if joint State and City solutions are not found in the months ahead."; and

**WHEREAS**, the state of Wilmington's finances should be addressed in a timely fashion;

**I, RUTH ANN MINNER, GOVERNOR OF THE STATE OF DELAWARE, DO HEREBY ORDER ON THE 31<sup>ST</sup> DAY OF MARCH 2003:**

1. The Task Force on Financial Options for the City of Wilmington is hereby created.

2. The Task Force shall report to me, the Delaware General Assembly, and the Mayor and City Council of

Wilmington by no later than May 30, 2003 with specific recommendations for broadening and diversifying the sources of the City of Wilmington's annual revenues.

3. The Task Force shall be comprised of the following twenty-three (23) members:

Four (4) Representatives of the 142<sup>nd</sup> Delaware General Assembly, two (2) of whom (one Democrat and one Republican) shall be appointed by the Speaker of the House and two (2) of whom (one Democrat and one Republican) shall be appointed by the President Pro Tempore of the Senate.

Five (5) Representatives of the State Government appointed by the Governor.

Four (4) Representatives of City Government appointed by the Mayor.

One (1) Representative of the Wilmington City Council appointed by the President of City Council.

One (1) Representative of the New Castle County Government appointed by the County Executive.

One (1) Representative of the Delaware Economic and Financial Advisory Council (DEFAC).

Two (2) Representatives of the Wilmington Economic and Financial Advisory Council (WEFAC), one of whom shall be its Chairman and the other of whom shall be appointed by said Chairman.

Five (5) Representatives of the private sector appointed by the Governor.

4. The Chair(s) of the Task Force shall be selected by the Governor.

Ruth Ann Minner  
Governor

Attest:  
Harriet Smith Windsor  
Secretary of State

STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER

**EXECUTIVE ORDER  
NUMBER FORTY-THREE**

**TO: Heads of All State Departments and Agencies**

**RE: Authorizing The Establishment Of A Special Fund To Assist Delaware Reservists Ordered To Active Duty For Any Mobilization Of Any Duration Who Have Suffered Serious Financial Harm As A Result Of Mobilization**

**WHEREAS**, since September 11, 2001, the United States of America, acting in concert with other nations, has deployed its armed forces to the Persian (Arabian) Gulf to fight terrorism and protect the countries in the region; and

**WHEREAS**, members of the Delaware Army and Air National Guard, and Delawareans who are members of the Army, Air Force, Navy, Marine Corps, and Coast Guard Reserve have been and will be called into active federal service; and

**WHEREAS**, many individuals and organizations desire to extend financial aid and assistance to ameliorate the hardships of Delawareans called to active federal service and their dependents; and

**WHEREAS**, the State Area Command of Delaware, commanded by the Adjutant General of the State of Delaware, has been directed by the Department of Defense of the United States to plan, organize, and manage the Defense Family Assistance Program within the State of Delaware; and

**WHEREAS**, it is the policy of the State of Delaware to minimize the hardships to its people arising from call to active federal service for mobilizations of any duration;

**NOW THEREFORE**, I, RUTH ANN MINNER, GOVERNOR OF THE STATE OF DELAWARE, HEREBY ORDER ON THIS 4<sup>TH</sup> DAY OF APRIL, 2003:

1. The Adjutant General of the State of Delaware is authorized and directed to establish and maintain the "Delaware National Guard and Reserve Emergency Assistance Fund" (hereinafter the "DNGREAF"). The DNGREAF shall be maintained as a separate fund, separate from the General Fund or any special fund of the state.

2. Under rules and regulations prescribed by the Adjutant General, the DNGREAF shall:

a. Receive, collect, and accept donations of money from whatever source or origin for the benefit of

(1) Residents of the State of Delaware who are members of the reserve components of the armed forces

of the United States, and who were ordered to or volunteered for active federal service as a result of mobilizations of any duration;

(2) Members of the reserve components of the armed forces of the United States whose units were permanently stationed in the State of Delaware at the time these units were ordered to active federal service as a result of mobilizations of any duration; and

(3) The dependents of persons described in subparagraphs (1) and (2).

b. Disburse and pay to eligible persons (as defined in subparagraph (a)) such funds as may be necessary and appropriate to alleviate financial hardship resulting from the call of a reservist to active federal service as a result of mobilizations of any duration.

c. Be managed in accordance with policies and procedures established by the Adjutant General of the State of Delaware. These procedures shall ensure sound management of funds deposited in the DNGREAF, and equitable distribution of those funds to eligible persons. These procedures will specify periodic reports to be submitted to the Governor on the activities of the DNGREAF.

3. The DNGREAF shall not pledge, encumber, or obligate in any way the credit of the State of Delaware.

The following Attorney General Opinions have recently been published. The opinions are available in full text by visiting the Attorney General website at:

[http://www.state.de.us/attgen/main\\_page/opinions/opinions.htm](http://www.state.de.us/attgen/main_page/opinions/opinions.htm)

<b>OPINION</b>	<b>SUBJECT</b>
02-IB07	F.O.I.A. Complaint Against Sussex County Council
02-IB08	F.O.I.A. Complaint Against Sussex County
02-IB09	F.O.I.A. Against Middletown
02-IB10	F.O.I.A. Complaint Against Christina School District
02-IB11	Computer Matching and Release of Information to Law Enforcement Agencies
02-IB12	F.O.I.A. Complaint Against Fenwick Island Town Council
02-IB18	F.O.I.A. Complaint Against Town of Laurel
02-IB19	F.O.I.A. Complaint Against Joint School Boards of New Castle County
02-IB21	F.O.I.A. Complaints Against Town of Fenwick Island
02-IB22	F.O.I.A. Complaints Against New Castle County and New Castle County Council
02-IB23	F.O.I.A. Complaint Against Sussex County Planning & Zoning Commission
02-IB24	F.O.I.A. Complaint Against New Castle County
02-IB25	Referrals Prohibited to Physical Therapists pursuant to 24 Del. C. § 2616 (a) (8)
02-IB26	F.O.I.A. Complaint Against City of New Castle
02-IB27	F.O.I.A. Complaint Against Sussex County Council
02-IB28	DAPE's Inquiries Concerning The State Procurement Act
02-IB29	The Clean Indoor Air Act
02-IB30	F.O.I.A. Complaint Against New Castle County
02-IB31	F.O.I.A. Complaint Against Sussex County Council
02-IB32	F.O.I.A. Complaint Against New Castle County
02-IB33	F.O.I.A. Complaint Against Town of Camden
02-IB34	F.O.I.A. Complaint Against the Town of South Bethany
03-IB01	F.O.I.A. Complaint Against New Castle County
03-IB02	F.O.I.A. Complaint Against New Castle County
03-IB03	F.O.I.A. Complaint Against Town of Fenwick Island
03-IB04	Effect of Governor's Pardon on the Ownership of Firearms
03-IB05	F.O.I.A. Complaint Against Town of Fenwick Island
03-IB07	Deduction of Fair Share Fees

**DEPARTMENT OF INSURANCE****AGENTS BULLETIN NO. 12****CONTINUING EDUCATION WAIVER FOR ACTIVE  
DUTY PERSONNEL**

Issued March 24, 2003

**TO: ALL INSURERS AND LICENSEES**

**FROM: DONNA LEE H. WILLIAMS,  
COMMISSIONER**

With the activation of United States military personnel for service both overseas and to protect our homeland, the Delaware Insurance Department recognizes there are concerns regarding military personnel who hold insurance licenses. We remain cognizant of the fact that some producers may be unable to fulfill certain licensing renewal requirements, especially continuing education requirements. In order to avoid imposing additional burdens and hardships on those who have been called upon to serve their country, I have granted a waiver of insurance continuing education requirements and license renewal requirements, including fees, and the waiver of any fine or sanction for failure to comply with renewal procedures during the year in which a producer is called to active military service. I recognize that waiving such requirements will enable these individuals to immediately return to work and support their families.

I would appreciate your assistance with notifying all your appointed producers that this waiver of insurance renewal license and continuing education requirements exists. The Department is requesting that all affected individuals notify our licensing division upon their return home and provide a copy of their activation order to document our files.

Because the Insurance Department is not notified in advance of activation of military personnel, some non-resident licensees may receive notices of suspension. The records will be corrected upon notice and proof of activation.

Our hearts and prayers go out to those serving in the military and their families during these difficult and uncertain times.

Donna Lee H. Williams  
Commissioner

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**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
BOARD OF PHARMACY**

**PLEASE TAKE NOTICE**, pursuant to 29 Del. C. §2509, the Delaware Board of Pharmacy (Board) has developed and proposes to modify Regulations 1.0 and 3.0. The changes to Regulation 1.0 relating to the national examinations make the rule consistent with the requirements of the National Association of Boards of Pharmacy (NABP). The changes to Regulation 3.0 give a pharmacy more discretion in choosing the appropriate reference material and limit the requirement for metric weights to a pharmacy using a balance.

A public hearing will be held on June 11, 2003 at 9:30 a.m. in the Jesse Cooper Building, Room 309 (third floor conference room), Federal and Water Streets, Dover, DE 19901. Written comments can be submitted at any time prior to the public hearing in care of Gradella E. Bunting at the above address. In addition to publication in the Register of Regulations and two newspapers of general circulation, copies of the proposed regulation can be obtained from Gradella E. Bunting by calling (302)739-4798.

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**DEPARTMENT OF AGRICULTURE  
THOROUGHBRED RACING COMMISSION**

**The Commission issues** these proposed rules pursuant to 3 Del. C. 10103 and 29 Del. C. 10115. The Commission will accept written comments from May 1, 2003 through May 30, 2003. The Commission will hold a public hearing on the proposed rule amendments on May 21, 2003 at 11:00 a.m. at Delaware Park, 777 Delaware Park Boulevard, Wilmington, DE. Written comments should be submitted to John Wayne, Administrator of Racing, Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901.

The Commission proposes the following three rule amendments: 1)amend Rule 1.28 to clarify that the definition of a "Meeting" to include all race dates approved by the Commission under 3 Del. C. 10122(c); 2)amend Rule 3.02(a) to clarify that the authority of the Stewards at the Meeting shall be during the period as required by the Commission; and 3)amend Rule 19.01(d) to provide that one steward may hold a hearing during emergencies or during periods when there is no live racing.

**STATE BOARD OF EDUCATION**

The State Board of Education will hold its monthly meeting on Thursday, May 16, 2003 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

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**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES  
DIVISION OF LONG TERM CARE RESIDENTS  
PROTECTION**

**Public Notice**

The Department of Health and Social Services (DHSS), Division of Long Term Care Residents Protection, has prepared two draft regulations amending the Regulations Governing the Adult Abuse Registry pursuant to 11 Del. C., Section 8564(g). The first proposed regulation specifies that the information to be disclosed upon completion of an investigation shall include the date and time of the incident if that information is known. The second proposed regulation strikes the use of the term "adult abuse" in order to acknowledge that various criminal convictions may result from conduct which has also led to placement on the Adult Abuse Registry.

**Invitation For Public Comment**

A public hearing will be held as follows:

Wednesday, June 4, 2003, 9:00 AM  
Room 301, Main Building  
Herman Holloway Campus  
1901 N. DuPont Highway  
New Castle

For clarification or directions, please call Gina Loughery at 302-577-6661.

Written comments are also invited on these proposed revised regulations and should be sent to the following address:

John Thomas Murray  
Division of Long Term Care Residents Protection  
3 Mill Road, Suite 308  
Wilmington, DE 19806

Written comments will be accepted until the conclusion of the public hearing.

**DIVISION OF SOCIAL SERVICES**
**Public Notice**
**Fair Hearing Practices and Procedures**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code), and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, Delaware Health and Social Services (DHSS) / Division of Social Services proposing to amend the Division of Social Services Manual (DSSM) to make several "housekeeping" changes regarding the agency's fair hearing practices and procedures.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720-0906 by May 31, 2003.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

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**DEPARTMENT OF INSURANCE**
**NOTICE OF PUBLIC HEARING**

INSURANCE COMMISSIONER DONNA LEE H. WILLIAMS hereby gives notice that a PUBLIC HEARING will be held on Wednesday May 28, 2003, at 10:00 a.m. in the Hearing Room of the Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, Delaware. The hearing is to consider amendments to Regulation 1310 (formerly Regulation 80) relating to the STANDARDS FOR PROMPT, FAIR AND EQUITABLE SETTLEMENT OF CLAIMS FOR HEALTH CARE SERVICES

The purpose for amending Regulation 1310 is to re-define certain terms and to reduce the number of days in which a health insurer may pay a clean claim from 45 to 30. Additionally, the regulation will be re-numbered to conform to the format required by the Registrar of Regulations. This is a third hearing to consider amendments to the regulation resulting from public comment on the regulation as originally proposed.

The hearing will be conducted in accordance with the Delaware Administrative Procedures Act, 29 Del. C. Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the Hearing. Written comments must be

received by the Department of Insurance no later than Monday June 2, 2003, and should be addressed to Deputy Attorney General Michael J. Rich, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904.

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**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL  
DIVISION OF AIR AND WASTE MANAGEMENT  
AIR QUALITY MANAGEMENT SECTION**
**Title Of The Regulations:**

“Reporting Of A Discharge Of A Pollutant Or An Air Contaminant”

**Brief Synopsis Of The Subject, Substance And Issues:**

The Department is planning make several minor corrections to the list of substances (Section 3 Table A) associated with the current regulation that describes the requirements for reporting the environmental release or discharge of a pollutant or air contaminant. The purpose of this proposed amendment is to change to reportable quantity for the flammable substance hydrogen, clarify flammable substance reportable quantities, and correct several technical mistakes in the associated list of substances.

**Notice Of Public Comment:**

The public hearing date is scheduled for June 25. The public comment period for this proposed amendment will extend through July 4, 2003. Interested parties may submit comments in writing during this time frame to: Jay Brabson, Air Quality Management Section, 715 Grantham Lane, New Castle, DE 19720, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Wednesday, June 25, 2003 beginning at 6:00 PM in the DNREC auditorium at the Richardson and Robbins Building, 89 Kings Highway, Dover, DE.

**Prepared By:**

Jay Brabson (302) 323-4542 April 7, 2003

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**DIVISION OF FISH AND WILDLIFE**
**Title Of The Regulations:**

Tidal Finfish Regulations, Shellfish Regulations.

**Brief Synopsis Of The Subject, Substance And Issues:**

To create a new Tidal Finfish Regulation 29 and a new Shellfish Regulation S-76 that establish procedures for conducting the first lottery and subsequent lotteries of available commercial gill net permits and authorization for commercial hook and line permits (Tidal Finfish Regulation 29), and commercial crab dredge, conch pot, and conch dredge licenses (Shellfish Regulation S-76). It is proposed that the first lottery for available licenses be held on July 1, 2003 and subsequent lotteries will be held the first working day in January of each year thereafter, as long as one or more licenses are available. Participants in the lotteries shall include current participants in the apprentice program who have completed the required and properly documented 150 days of commercial fishing activities over no less than a 2-year period dating from the specific date the applicant signed up as an apprentice, according to the provisions of §915(e),(k), and (n); and §1920, 7 Delaware Code. Other dates suggested for the first and subsequent lotteries will be considered.

**Notice Of Public Comment:**

Individuals may present their opinions and evidence and/or request additional information by writing, or calling or visiting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, Delaware 19901, (302)739-3441. A public hearing on this proposed amendment and new regulation will be held at the Department of Natural Resources and Environmental Control Auditorium 89 Kings Highway, Dover, DE at 7:30 PM on May 28, 2003. The record will remain open for written or e-mail comments to [roy.miller@state.de.us](mailto:roy.miller@state.de.us) until 4:30 PM on May 30, 2003

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**DELAWARE RIVER BASIN  
COMMISSION**

**25 STATE POLICE DRIVE  
P.O. BOX 7360  
WEST TRENTON, NJ 08628-0360**

**NOTICE OF PUBLIC HEARING**

The Delaware River Basin Commission ("Commission") is federal-state regional agency charged with managing the water resources of the Basin without regard to political boundaries. Its members are the governors of the four basin states – New Jersey, New York, Pennsylvania, and Delaware – and a federal representative appointed by the President of the United States. As such, the Commission is exempt from the requirements of 29 Delaware Code Chapter 101. The following is published by the Delaware River Basin Commission for informational

purposes.

**Proposal to Revise the Fee Schedule for the Review of  
Projects under Section 3.8 and Article 10 of the Delaware  
River Basin Compact**

**Summary.** The Commission will hold a public hearing and solicit comment on proposed changes to the fee schedule for the review of projects under Section 3.8 and Article 10 of the *Delaware River Basin Compact*. The Commission instituted project review fees in 1972, in order to allocate to applicants a portion of the cost of reviewing water resource projects. The fees, which are paid to the Commission at the time applications are filed, were increased only once, in 1991, and have not been revised since.

The substantive revisions include the following: instituting filing fees for projects sponsored by political subdivisions of the basin states; for public projects costing less than \$250,000, charging a fee of \$250; for privately sponsored projects costing \$250,000 or less, increasing the fee from \$250 to \$500; for projects costing from \$250,001 to \$10,000,000, increasing the fee from 0.1 to 0.2 percent of project cost; and for projects costing over \$10,000,000, increasing the fee from 0.04 to 0.06 percent of project cost, not to exceed \$50,000. In addition, the surcharge for any project resulting in an out-of-basin diversion is proposed to be increased from 50 percent to double the fee calculated in accordance with the foregoing. The method of calculating project costs is proposed to remain unchanged. New fees are proposed to be instituted for two types of actions: (1) a fee of \$5,000 is proposed for a request for an emergency certificate under Section 2.3.9B of the Commission's *Rules of Practice and Procedure* to waive or amend a docket condition; and (2) a fee of \$500 is proposed for the transfer of a docket upon a change of ownership as defined in Resolution No. 87-15. In all cases, if the fixed fee or fee calculated in accordance with the prescribed formulas is deemed by the executive director to be insufficient due to exceptional costs associated with Commission review, it is proposed that the Commission may charge the applicant 100 percent of all costs deemed by the executive director to be exceptional. The revised fee schedule is proposed to become effective on July 1, 2003 for all applications submitted on or after July 1, 2003.

A draft resolution containing the proposed new fee schedule may be viewed on the Commission's web site, <http://www.drbc.net>. The current fee schedule, set forth in Resolution No. 91-3, also may be viewed on the web site.

**Dates.** The public hearing will be held on June 26, 2003 during the Commission's regular business meeting, which will begin at 1:00 p.m. The hearing will continue until all those present who wish to testify are afforded an opportunity to do so. Persons wishing to testify are asked to register in

advance with the Commission Secretary, by phoning 609-883-9500 x203. Although written comments will be accepted through the close of the public hearing, persons wishing to submit written comments only are asked to do so by June 20.

**Addresses.** The public hearing will be held at the Commission's offices at 25 State Police Drive in West Trenton, New Jersey. Directions are posted on the Commission's web site at <http://www.drbc.net>. Written comments should be submitted electronically to [fees@drbc.state.nj.us](mailto:fees@drbc.state.nj.us), with a subject line reading "FEES." The full name, street or post office address, and telephone number for the entity or individual submitting the comment must appear on all submissions.

**Further Information, Contacts.** Please contact Pamela M. Bush at 609-883-9500, ext. 203 with questions about this matter.

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**DELAWARE RIVER BASIN  
COMMISSION**

**25 STATE POLICE DRIVE  
P.O. BOX 7360  
WEST TRENTON, NJ 08628-0360**

The Delaware River Basin Commission will meet on Thursday, May 8, 2003 in West Trenton, New Jersey. For more information contact Pamela M. Bush, Commission Secretary and Assistant General Council, at (609) 883-9500 ext. 203.

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## 142<sup>nd</sup> Delaware General Assembly

Legislative Hall, Dover, DE. 19901 Phone: (302) 744 4114



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*Delaware became the first state on December 7, 1787 by being the first state to ratify the new United States Constitution. Delaware's first constitution was adopted on September 20, 1776, with subsequent versions adopted in 1792, 1831 and the current version in 1897.*



*Delaware's lawmaking body, is comprised of a State House of Representatives, whose 41 members are elected for two-year terms, and a State Senate, whose 21 members are elected for four-year terms. Half of the Senate seats are contested in each general election.*

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## The General Assembly Website features:

- Current legislative information
- Information on both the Senate and House of Representatives
- Access the Delaware Code
- Access to the Delaware Register of Regulations
- Information on the legislative process
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The General Assembly Website is located at:

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- Up-to-date version of the Code reflecting recent legislative enactments
- Comprehensive full text search capabilities.

**Visit the Delaware Code On-Line at:**

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